

ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

LONG ISLAND LIGHTING COMPANY[®]

Docket No. 50-322 OL

(Shoreham Nuclear Power Station)

Location: Riverhead, N. Y.

Pages: 20,955-21,178

Date: April 8, 1983

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of :
LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL
(Shoreham Nuclear Power Station) :
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Suffolk County Center
Riverhead, New York 11901
Friday, April 8, 1983

The hearing in the above-entitled matter
reconvened, pursuant to recess, at 9:00 a.m.

BEFORE:

- LAWRENCE BRENNER, Chairman
Administrative Judge
- JAMES CARPENTER, Member
Administrative Judge
- PETER A. MORRIS, Member
Administrative Judge

PENAGAD CO., BRIDGEVILLE, N.J. 07902 - FORM 1074

1 APPEARANCES:

2 On behalf of the Applicant:

3 ANTHONY F. EARLEY, Esq.

4 T. S. ELLIS, Esq.

5 DONALD P. IRWIN, Esq.

6 Hunton & Williams

7 707 East Main Street

8 Richmond, Virginia 23212

9 On behalf of the Regulatory Staff:

10 RICHARD RAWSON, Esq.

11 EDWIN J. REIS, Esq.

12 Washington, D.C.

13 On behalf of Suffolk County:

14 LAWRENCE COE LANPHER, Esq.

15 KARLA J. LETSCHE, Esq.

16 Kirkpatrick, Lockhart, Hill,

17 Christopher & Phillips

18 1900 M Street, N.W.

19 Washington, D.C. 20036

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C O N T E N T S

<u>Witnesses:</u>	<u>Direct</u>	<u>V. Dire</u>	<u>Cross</u>	<u>red.</u>	<u>Recr.</u>	<u>Board</u>
<u>(County of Suffolk)</u>						
Richard B. Hubbard) -and-)						
Gregory C. Minor) <u>(Applicant)</u>	--	--	21,010	--	--	21,017
Walter Pollock)						
James Rivello)						
William Museler)	21,035	--	--	--	--	21,043
George Dawe)			21,118			
Brian McCaffrey)						

E X H I B I T S

	<u>Ident.</u>	<u>Rec'd.</u>
LILCO Exhibit 72 Portions of I&E Report 50-322/83-02	20,998	
LILCO Exhibit 73		21,000
LILCO Exhibit 74 List of LILCO/S&W Audits Reviewed by NRC Staff Witnesses In Preparation for Oral Testimony	21,033	21,033
LILCO Exhibit 75 Memo dated March 23 from Mr. Pollock	21,043	21,043

P R O C E E D I N G S

(9:02 a.m.)

JUDGE BRENNER: Good morning.

What we'd like to do is take care of the miscellaneous matters at this point. The parties had several things that they were going to get back to us with.

We can do the outstanding exhibits first, Mr. Earley, if you're ready on that.

MR. EARLEY: Judge, are you talking about the --

JUDGE BRENNER: The motion you filed and also the RAT listing of which portions would be in evidence.

MR. EARLEY: I have the portions of the RAT inspection, and I will hand that out.

Judge, the document that I just handed out, portions of EG&G 50-322-83-02, admitted in evidence, this document was supplied to Mr. Miller. Mr. Miller agrees that accurately reflects the Board's rulings on admitting portions of the RAT inspection into evidence.

Would you like to bind that in at this point, Judge?

JUDGE BRENNER: All right. This will be LILCO Exhibit 72.

(The document referred to was marked LILCO Exhibit NO. 72 for identification.)

(LILCO Exhibit No. 72 for identification follows.)

Portions of I&E Report 50-322/83-02
Admitted Into Evidence

Cover letter (2 pages) except for the following portion
of the second paragraph on page 1:

Based on this inspection, we determined that a number of areas require resolution by LILCO before a conclusion can be reached by us regarding such a recommendation. These items are identified in the attached report as requiring action prior to this decision point. Please give these items your particular attention. Should you determine that certain of these items cannot or need not be addressed prior to fuel load, please provide us with a letter within 30 days of the date of this letter describing your position. We also note licensee representatives have made commitments as documented in this report. In your response, please reaffirm these commitments.

Appendix A

Cover Page of Report

Inspection Summary page except the following portion:

These violations and additional areas, identified by an asterisk (*) in Table I on the following page, require resolution prior to a recommendation by Region I relative to a decision on operating license. Table I identifies open items that will require additional NRC inspection to verify corrective actions.

pages 1-2

§5 starting on page 5

pages 6-7

§8.2 starting on page 12

pages 13-17

page 18 up to but not including §8.5

page 22

APR 8 1983

Sider Ex. 72 Id _____ EV ✓

CARL W. GIRARD

Page 23 except §9.2 and the following sentence in § 9.3:

Inconsistencies in Master Punch List items relative to observed field conditions were brought to the attention of licensee plant management.

Page 24

Confirmatory Action Letter (2 pages)

1 JUDGE BRENNER: I took a quick look to see
2 if the RAT inspection had previously been given an exhibit
3 number, but I did not find out. But we all know what it is
4 without identifying it.

5 MR. EARLEY: I believe it was a Staff exhibit.

6 JUDGE BRENNER: We'll admit LILCO Exhibit 72
7 into evidence, of course, in and of itself with an
8 exhibit of this nature. It is probably no
9 distinction between marking it for identification or
10 admitting into evidence.

11 The parties have agreed that this represents a
12 ruling on the transcript and we accept it. Of course, if
13 later turns out it is in error, it is the transcript that
14 governs. This is merely a convenience.

15 Also, Mr. Earley, you had the pending motion
16 that we said we would handle this week.

17 MR. EARLEY: Judge, is that the motion on the
18 LILCO audit reports?

19 JUDGE BRENNER: Yes.

20 MR. EARLEY: I will have to locate a clean
21 copy of that to bind into the transcript. I'm also
22 trying to locate a clean copy of the OQA staffing
23 settlement agreement. I should have that by the first
24 break.

25 JUDGE BRENNER: I have the OQA staffing

1 agreement, that is the settlement on Suffolk County
 2 Contention 13(d). We can do it in my copy and you
 3 can catch up with the reporter later.

4 (Judge Brenner proffered to counsel.)

5 MR. EARLEY: Judge Brenner, I have resolution
 6 of subsection (d) of Suffolk County Contention 13,
 7 Quality Assurance/Quality Control Operations. This is a
 8 settlement agreement that contains five pages, plus an
 9 attachment. It is signed by counsel for the parties
 10 and dated March 31, 1983.

11 (The settlement agreement referred to follows.)

12 (The document previously
 13 marked for identification
 14 as LILCO Exhibit 73
 15 was received in evidence.)
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

_____))
In the Matter of))
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322 O.L.
(Shoreham Nuclear Power Station,))
Unit 1))
_____)

RESOLUTION OF SUBSECTION (d) OF SC CONTENTION 13 --
QUALITY ASSURANCE/QUALITY CONTROL -- OPERATIONS

This Agreement by and among Long Island Lighting Company ("LILCO"), the Nuclear Regulatory Commission Staff ("Staff"), and Suffolk County ("SC" or the "County") (hereinafter collectively, the "Parties") resolves Subsection (d) of SC Contention 13 -- Quality Assurance/Quality Control -- Operations, in accordance with the terms stated below, subject to the approval of the Atomic Safety and Licensing Board ("ASLB" or "Board").

I. RECITALS

A. SC Contention 13(d) deals with the alleged failure of LILCO to provide for an adequate number of qualified quality assurance/quality control ("QA/QC") personnel on the operating staff during the operation of the Shoreham Nuclear Power Station ("Shoreham"), including the availability of quality control personnel on off-shifts.

Lilco APR 8 1983
Ex. 73 Id EV ✓
CARL W. GIRARD

B. The County's concern regarding the level of staffing of the Operating Quality Assurance ("OQA") Section at Shoreham was based upon the absence of any meaningful analysis by LILCO of the QA/QC tasks required to be performed by the OQA Section, in order to ascertain and project the manhours and number of QA/QC personnel necessary to perform those tasks adequately. Based upon their review of the requirements of the LILCO quality assurance ("QA") Manual and QA procedures at the Shoreham station ("QAP-S") for operations, consultants retained by the County concluded that the eight (8) QA/QC personnel to which LILCO had committed in the FSAR was an insufficient number to perform OQA Section tasks.

C. During the ASLB proceeding, LILCO indicated that it intended to provide a minimum of fourteen (14) qualified QA/QC personnel in the OQA Section during the first year of operations of Shoreham. Consultants retained by the County believe that such a number of qualified QA/QC personnel would be likely to be adequate for such period.

D. Maintaining the need for flexibility to respond to changing conditions, LILCO was unwilling to commit to any particular number of QA/QC personnel in the OQA Section for subsequent years. However, after extensive discussions among the Parties, the basis for analyses and projections of OQA staffing requirements was agreed as reflected in this Agreement.

E. LILCO does not agree with all of the characterizations of the OQA staffing issue, attributable as expressions of SC's views in paragraphs I.B. through I.D. above. In LILCO's view, staffing levels had been adequately analyzed.

II. AGREEMENT

The Parties hereby agree as follows:

A.1. LILCO will prepare within sixty (60) days after the date of this Agreement a detailed projection of OQA Section staff requirements for the twelve month period following such date.

A.2. This projection will be based on an analysis of specific QA/QC tasks necessary to meet the requirements of the QA Manual and QAP-Ss for the OQA Section. The categories of these tasks are listed in Attachment 1 hereto. LILCO represents that Attachment 1 is complete and covers all tasks required of the OQA Section by the QA Manual and QAP-Ss.

A.3. The projection will also consider the qualifications needed for such tasks and will make a realistic estimate of the manhours required for each of the tasks listed in Attachment 1.

A.4. The projection will assume scheduled overtime of not more than ten percent of regular hours annually.

A.5. The projection will conclude with the number and qualifications of QA/QC personnel estimated to be necessary.

B. LILCO will maintain a minimum of fourteen (14) full-time QA/QC personnel assigned to the OQA Section for the twelve month period following the date of this Agreement.

C. At least thirty (30) days before each succeeding twelve month period during the time Shoreham has an operating license, LILCO will prepare for each such period a projection on the same basis as described in paragraph A above.

D. Each year LILCO will also prepare a document comparing the previous twelve month projection with the actual tasks, manhours and personnel assigned to the OQA Section for such period.

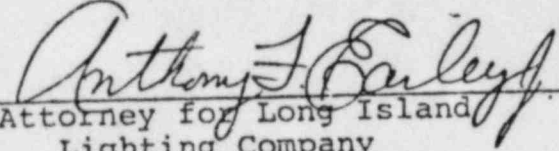
E. Each of the projections and each document comparing the previous twelve month projection with actual tasks will be reviewed by the Shoreham Plant Manager, the QA Department Manager, and the Shoreham Nuclear Review Board, and must be approved by the Plant Manager with the concurrence of the QA Department Manager. These documents will also be available onsite at Shoreham for review by the Staff promptly after their approval by LILCO. LILCO will provide the County with a copy of the initial projection promptly after its approval by LILCO. Copies of subsequent projections and comparison documents will be supplied to the County by the Staff.

F. LILCO will staff the OQA Section at a minimum in accordance with the projections, although modifications may be made as justified during actual performance.

G. For purposes of this Agreement, the term "date of this Agreement" shall mean the date on which the Board accepts this Agreement.

III. CONCLUSION

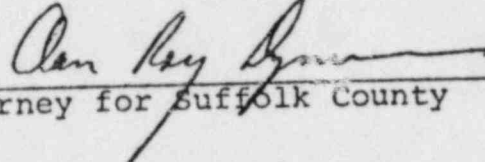
On the basis of the recitals and agreements above, SC Contention 13(d) is hereby withdrawn.



Attorney for Long Island
Lighting Company



Attorney for NRC Staff



Attorney for Suffolk County

DATED: MARCH 31, 1983

ATTACHMENT 1

1. Audit
2. NRC inspection response
3. QAD audit response
4. Surveillances
5. Witnessing of flushes
6. Repair rework
7. Maintenance work requests
8. Procedure review
9. Procedure development
10. Nonconformance control
11. Vendor documentation review
12. Procurement document review
13. Receipt inspection
14. Fuel inspection
15. Training presented
16. Training received
17. OQA record preparation and processing
18. Management reports
19. Administration
20. Offsite committees (e.g., ASME procedures group)
21. Modification review

1 JUDGE BRENNER: All right. As we previously
2 indicated, the Board approves that agreement. Once again,
3 as we have had so many occasions to do in this proceeding,
4 we do commend the parties for their efforts in settling that
5 which could be settled, and we approve it at this
6 time.

7 Would this be a good time, also, to hear about
8 the pendency of the settlement among the parties on the
9 procedures portion, which I guess is Suffolk County
10 Contention 13(a)?

11 MR. ELLIS: Yes, Judge Brenner, I'll give a
12 summary of that, if the Board would like.

13 The parties agreed to resolve Contention
14 13(a) essentially.

15 JUDGE BRENNER: Excuse me, Mr. Ellis. I think
16 I forgot to bind the settlement agreement in. Let's do
17 that at the point just before you started speaking.

18 MR. ELLIS: With respect to the 13(a), the
19 parties agree to resolve Contention 13(a) by negotiation
20 with respect to a group of procedures and manuals.
21 Specifically, the procedures involved were all of the
22 quality assurance procedures of the quality assurance
23 department known as QAPs and the QAPSS, which are the
24 quality assurance procedures of the OQA Division at
25 the plant.

1 In addition, included within the scope of the
 2 negotiation apart from the QAPs and QAPSS were the QA
 3 manual and two identified station procedures. Pursuant
 4 to the agreement to resolve Contention 13(a), the parties
 5 met, both through their consultants and in addition met
 6 with the NRC and had extensive conversations, including
 7 telephonic discussions, and the NRC Staff participated
 8 in some of these.

9 As a result of these discussions,
 10 agreement was reached in principle on a number of
 11 changes to the QA manual and the procedures, and the
 12 disagreements that could not be resolved were brought
 13 to the attention of Staff and have been resolved.

14 LILCO is in the process of implementing
 15 those changes.

16 It has made the changes and sent the procedures
 17 and the manual sections to the County consultants for their
 18 review, with one exception. Last week. Maybe they
 19 arrived early this week. I can't be certain whether they got
 20 them last week or this week.

21 In any event, the County is now reviewing those.

22 The procedures are also going through the
 23 LILCO review process. The County has advised the Board
 24 and LILCO that to the extent that the agreements that were
 25 reached are implemented, that the County would not

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1 expect to litigate any further matters in connection with
2 this area.

3 The matters that remained to be done are the
4 County needs to complete its review of the procedures to
5 determine whether the agreements that were reached in
6 principle had been implemented, and the LILCO review
7 process has to be completed to ensure that any of the
8 changes that were made can in fact be approved.

9 At the present time, therefore, we do not
10 anticipate, speaking for LILCO, we do not
11 anticipate that there is any matter that will
12 remain for litigation or for mediation under the
13 protocol that was bound in, I believe, much earlier in
14 the record for the Board to consider.

15 We think that the changes, the agreements that
16 were reached will suffice and that the matter will be
17 resolved and then the contention resolved in that fashion.

18 Judge Brenner, I'm prepared to respond to any
19 questions.

20 I think in terms of timing, the two things that
21 need to be done are that LILCO needs to complete the
22 review process so that if any change that has been
23 agreed upon does not make it through the review process
24 that the County can be advised of that and we can proceed to
25 further discussions on why that was not so and whether

1 anything can be done in lieu of that. And the County
2 needs to complete its review of the changed procedures that
3 we sent them.

4 There was one procedure that has not been sent
5 to them as yet, but I suspect it will be sent either
6 the beginning of next week, if not today.

7 JUDGE BRENNER: I think the nature of the
8 expected modifications to all procedures, including
9 that last one, has been discussed. So it's just a
10 matter of verifying whether the mutual intent of the parties
11 has been implemented.

12 MR. ELLIS: That's precisely right.

13 Excuse me. I should point out that the
14 verbatim changes have in fact, with one exception, all been
15 sent to the County already.

16 JUDGE BRENNER: One reason we inquired and
17 did not understand why we could not get a written agreement
18 while some of them were implementing the agreement would
19 continue in the future is because that is the way we
20 perceived the fact.

21 In the March 25, 1983 letter from
22 Mr. Dynner, it is consistent with what you said, but it
23 includes, and states, the County would not expect to
24 litigate any further matters within the scope of this
25 area; however, it also states "obviously the County

1 reserves its rights to board litigation or mediation
2 (points 7 and 8 of the outline) until review of the
3 changes finally implemented by LILCO. "

4 If you look at points 7 and 8 in the outline,
5 which you refer to as the protocol, it was received by us
6 on January 20, 1983. I don't know if it was discussed on
7 the record that day or a day shortly thereafter. Those
8 paragraphs discuss the point that if there remains any
9 disagreements between LILCO and the County, they will
10 be reported to us and so on. But the context of the
11 disagreements discussed there were not QC
12 implementing disagreements, but rather disagreements of
13 what should be done and it sounds to me you are well past
14 the stage of paragraph 7 and 8 and that is why I wanted
15 to get a better definition of what the reference to
16 paragraphs 7 and 8 in Mr. Dynner's letter meant.

17 Ms. Letsche, do you agree with the description
18 that Mr. Ellis gave?

19 MS. LETSCHE: Yes, generally, Judge Brenner, we
20 do. I think the reference in Mr. Dynner's letter would
21 apply to what Mr. Ellis mentioned, which is the fact
22 that LILCO review over the changes -- changes are what
23 the parties have agreed to. LILCO review is still going on
24 of those changes. If that review results in a decision
25 that some of those changes aren't going to be made, then

1 that would have to be discussed again. And I think
 2 everyone has recognized that.

3 The County believes, however, that everything
 4 is going to be resolved and that isn't going to be
 5 a need for litigation or mediation by the Board.

6 JUDGE BRENNER: Who is waiting for whom now?

7 MS. LETSCHE: Both of the things are going on
 8 at the same time, Judge Brenner, the County's review of what
 9 we have received is ongoing and we anticipate being able
 10 to finish that by the end of this weekend or the
 11 beginning of next week.

12 The LILCO review, I understand, is also
 13 going on and M. Ellis indicated that is proceeding
 14 quickly, also.

15 JUDGE BRENNER: I sense that nobody wants to
 16 give us an executed agreement contemplating what
 17 remains to be done as distinguished from waiting until it
 18 is done and then giving us the agreement.

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1 MS. LETSCHE: I think that's correct,
2 Judge Brenner.

3 JUDGE BRENNER: Is that right, Mr. Ellis?

4 MR. ELLIS: I would be glad to do that, Judge
5 Brenner, because I think there has been an agreement,
6 and I think the parties have resolved the matter. And
7 I certainly would have no difficulty putting on paper
8 what I've just described.

9 I don't know of any reason why there should
10 be any problem with the implementation of the
11 procedures. They do have to go through review process,
12 which is virtually completed.

13 JUDGE BRENNER: Let's handle it this way. Unless
14 we receive a written reason as to why it can't be done,
15 and a request for an extension of time accompanying
16 that written reason, we want to receive an executed
17 settlement agreement on Suffolk County Contention 13(a)
18 on the same date as LILCO's reply findings on the main
19 body of the QA litigation and environmental qualifications,
20 and that date is April 25th.

21 That does not mean that the review work
22 procedure has to be accomplished. If it is not, from what
23 I've heard today, I think you can accommodate that
24 within the agreement, that is, there is nothing left
25 to do on this matter than is left to do on other

j-2-2

1 subjects upon which settlement agreements were reached.

2 It may turn out, however, and one reason I'm
3 extending the date to near the end of the month, is
4 that if you completed the other work, that may make a
5 drafting simpler for you, of the agreement. I
6 think the only other matter was the fact that Ms. Letsche
7 wanted to find that quotation in a letter in the
8 emergency planning brief of the County, which we
9 discussed yesterday.

10 MS. LETSCHE: Yes, Judge Brenner. We checked
11 on that, and apparently what happened, we were unable
12 to find all the previous drafts of the reply. Somewhere
13 in the revision process quotation marks inadvertently
14 were put around the second quotation that you asked
15 about in footnote 8 on page 14 of our reply.

16 That statement, however, is based upon
17 the contents of Mr. Axelrod's letter that I provided the
18 Board with a copy of yesterday in the sentence
19 following the one that is quoted in the beginning of
20 footnote 8.

21 Mr. Axelrod's letter, therefore, states
22 review would be unavailing, in any event. The statement
23 in the County's footnote that the State of New York
24 has declined to further review the LILCO plan is
25 intended to be not a quotation, but paraphrase by the County

j-2-3

1 of that additional sentence in the Axelrod letter.

2 JUDGE BRENNER: More accurately, the County's
3 view of what that sentence means.

4 MS. LETSCHE: That is correct.

5 JUDGE BRENNER: All right. Given the
6 remarkable lack of exposition in Dr. Axelrod's letter,
7 I suppose that letter can mean different things
8 to different people, and I'll leave it at that.

9 As I stated earlier, since the letter has
10 been undated, there was a possibility of two letters being
11 in existence, and one being unbeknown to us, but we
12 now know that is not the case.

13 All right, Mr. Minor and Mr. Hubbard have
14 been waiting patiently at the witness table, and
15 at this time, we can continue LILCO's cross-examination
16 of these two County witnesses.

17 RICHARD B. HUBBARD

18 and

19 GREGORY C. MINOR,

20 were called as witnesses on behalf of the County of
21 Suffolk, and having been previously duly sworn, were
22 examined and testified as follows:

23 MR. EARLEY: Judge, for the Board's
24 information, I have very little cross-examination left.
25 It shouldn't take more than five or ten minutes, if that.

1 CROSS-EXAMINATION

2 BY MR. EARLEY:

3 Q Gentlemen, turn, if you will, to transcript
4 page 20,666.5 For the Board's convenience, I have extra
6 copies of that page, if you like.

7 JUDGE BRENNER: All right. We'll take two.

8 (Proffered)

9 BY MR. EARLEY:

10 Q Gentlemen, there Mr. Conran testifies that a
11 structure, system or component would be important
12 to safety but not safety related because for some undefined
13 and unknown reason or scenario in the future it might be needed
14 for some unknown purpose.15 Would you please explain how you would
16 determine what quality standards and what quality assurance
17 apply to that system, structure or component.18 MS. LETSCHE: Judge Brenner, I object. There
19 is lack of foundation in that question. There should
20 be first a question about whether or not these witnesses
21 agree with Mr. Conran's statement rather than asking them
22 to explain what Mr. Conran said.23 JUDGE BRENNER: I don't know that their
24 agreement is an essential element, but as a predicate
25 to the question, I think it would be helpful to

j-2-5

1 ascertain that at some point. We might as well do it
2 first, if that's all right with you, Mr. Early.

3 MR. EARLEY: I'll do that, Judge.

4 BY MR. EARLEY:

5 Q Gentlemen, would you agree with Mr. Conran
6 that a structure, system or component should be classified
7 as important to safety but not safety-related if for some
8 undefined and unknown reason or scenario in the future, it might
9 be needed for some unknown purpose?

10 A (WITNESS MINOR) Mr. Ellis, I tried to go back
11 and just briefly look at the pages preceding that and
12 put that in context with the other questions that
13 were being asked at that time, and I have trouble
14 extracting his comments from all the rest of the
15 transcript at that point.

16 I think the point that was trying to be made
17 here is that you can't simply exclude a component from
18 consideration or a structure, system or component from
19 a consideration because you haven't identified the
20 specific safety-related function for it.

21 It has to be put into the context of what
22 its overall function is, and how it may interact with
23 a lot of different components, not simply because it
24 has a safety-related function.

25 Now, back to your question. I'm not certain

j-2-6

1 I've answered your question, but in terms of agreeing
2 or disagreeing with him, I have difficulty in making
3 his statement without putting it in context with
4 the rest of the questions that were being asked.

5 Q Would it be fair to say, then, it is
6 your opinion that you have to know the function of the
7 particular component before you can determine
8 whether it would be included in some classification of
9 important to safety but not safety-related?

10 A (WITNESS MINOR) Yes, I believe you need to
11 know the function and you need to assess its operation
12 and its importance through various mechanisms and
13 human interaction.

14 Q And you would need to know those functions in
15 order to determine what quality standards and quality
16 assurance to apply to it, correct?

17 A (WITNESS MINOR) That would be one of the
18 elements you would look at in determining a QA level
19 to be applied to a particular structure, system or
20 component.

21 MR. EARLEY: Gentlemen, we have no further
22 questions.

23 JUDGE BRENNER: Staff?

24 MR. RAWSON: Thank you, Judge.
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CROSS-EXAMINATION

BY MR. RAWSON:

Q Good morning, gentlemen. Would you turn, please, to page 15 of your prefiled testimony.

A (WITNESSES COMPLIED)

Q May I direct your attention, please, to the sentence that begins immediately after footnote 30, beginning of the sentence reads, "Although the methodology to be used for the Indian Point study now planned by the Staff may be applicable to BWR studies" --

A (WITNESS MINOR) Yes.

Q Now, there is more than one methodology now planned by the Staff to be used in the Indian Point study; isn't that right?

A (WITNESS MINOR) It is a combined effort, and there would be a couple methodologies which are being compared; is that what you mean?

Q Yes, sir. One of the methodologies is diagraph matrix analysis, correct?

A (WITNESS MINOR) Yes, the point that we're making --

Q Excuse me. I think you answered the question, Mr. Minor. That's -- I think it was a simple yes or no.

JUDGE BRENNER: I think that's fair in this case, Ms. Letsche.

1 Go ahead with your next question.

2 BY MR. RAWSON:

3 Q Was another methodology the fault tree interaction
4 flue mode generalization?

5 A Yes, I believe.

6 Q And was the third methodology or the third
7 way of examining these things a method developed
8 by PASNY which involves dependency tables, to your
9 knowledge?

10 A (WITNESS MINOR) Yes, there was a PASNY
11 methodology which was being conducted on that plant.

12 Q My question, gentlemen, is, can you tell me
13 in what specific ways those methodologies may be
14 applicable to BWR studies.

15 A (WITNESS MINOR) As I started to say, the
16 point we are trying to make here is, they are evaluating
17 several methodologies and comparing them on the PWR.
18 Clearly, a PWR is different than a BWR, both in the
19 configuration and in the equipment, and in the systems
20 required for particular safety functions, and for different
21 control functions.

22 The methodologies, as we said here, may be
23 applicable to PWRs, but until you have demonstrated the
24 methodologies on a BWR, you have not really assured yourself
25 that it is applicable to Shreoham directly. And one of

j-2-9

1 the factors we were looking for in the systems
2 interaction program was that there be a demonstration
3 plant, which was a PWR. It has been a practice so
4 far in this program to focus almost entirely, I would say,
5 to focus entirely on pressurized water reactors,
6 rather than boiling water reactors.

7 Q My direct question, Mr. Minor, is, can you
8 tell me, please, in what specific ways those methodologies
9 may be applicable to BWRs?

10 A (WITNESS MINOR) I believe I answered that
11 by saying that only the general knowledge of the way the
12 methodology does or doesn't locate a specific system's
13 interactions on a PWR that were found by other
14 methodologies.

15 This is mainly a comparative study, in my view,
16 and to the extent that one is shown to identify a
17 type or a characteristic of interaction where another
18 does not, there would be comparative data. That
19 comparative data would give a relative importance of one
20 methodology over another or a relative use, let's say,
21 of one methodology over another. And that evaluation or
22 that gradation of use may be carried over to decide
23 how you might apply the same methodology to a boiling
24 water reactor. However, until that demonstration
25 is completed on a boiling water reactor, the results cannot be

j-2-10

1 used to conclude BWR systems interaction in
2 separatability.

3 Q Those methodologies, then, that we
4 discussed, those are not unique to nuclear power
5 plant systems analyses, are they?

6 A (WITNESS MINOR) Say again?

7 Q Those three methodologies we discussed, those
8 are not unique to the systems in the nuclear power plants,
9 are they?

10 A (WITNESS MINOR) Do you mean by "unique" to them, they
11 could only be applied to nuclear power plants?

12 Q Well, I mean, to your knowledge, are they
13 used for the analysis of systems other than in nuclear
14 power plants?

15 A (WITNESS MINOR) Oh, certainly. They could
16 be applied to other types of systems.

17 MR. RAWSON: Judge, I have no further questions
18 for the Staff.

19 Thank you.
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j-3-1

1 JUDGE BRENNER: The Board will ask some questions
2 before we go to redirect.

3 BOARD EXAMINATION

4 BY JUDGE MORRIS:

5 Q Mr. Minor, I believe you responded to Mr.
6 Earley that one way of deciding what classification of
7 either component or system would be to look at
8 its function; is that correct?

9 A (WITNESS MINOR) That's correct.

10 Q What other ways are available?

11 A (WITNESS MINOR) I tried to indicate some of
12 them in that discussion with Mr. Earley, and in its relative
13 relationship to other items, its human interaction with
14 other items, all the human, spatial, so forth, relationships,
15 one system to another, which goes beyond simply its
16 intended function in isolation by itself.

17 A (WITNESS HUBBARD) I'd like to add to that,
18 Dr. Morris, that my experience in trying to implement
19 a graded QA system was that, well, conceptually it
20 sounded like an interesting concept, that once I tried
21 implementing it, it was better to just have one quality
22 system. And to give you an idea of that, say you were building
23 a particular control panel. You would only have one
24 quality panel, really. You don't want to have two quality
25 panels and having people operating under two sets of

j-3-2

1 procedures, so that you ended up once one decided to
2 go beyond the safety-related to those items that were
3 not safety-related but important to safety, that in
4 terms of having one program that everybody was using
5 and not a multiplicity of programs, it became a practical
6 concept to just go ahead and use pretty much the
7 Appendix B program for all items important to safety,
8 so that that would say that you might end up doing more
9 from a programmatic point than you would have
10 justified purely on a function, safety function.

11 Q Well, Mr. Hubbard --

12 MR. EARLEY: Judge, excuse me. I don't mean
13 to interrupt, but I may have misinterpreted the question,
14 but I don't think Mr. Hubbard's answer had anything
15 to do with the question, and would move to strike it as
16 unresponsive.

17 JUDGE MORRIS: Mr. Earley, I'm willing to
18 accept the answer for what it's worth, and I'll pursue it
19 a little more.

20 BY JUDGE MORRIS:

21 Q Mr. Hubbard, in applying Appendix B to the
22 class safety-related, do you believe that each of the 16
23 criteria ought to be applied to each and every component,
24 system or structure that is safety-related?

25 A (WITNESS HUBBARD) Yes, I do, Judge Morris;

j-3-3

1 however, as I have discussed before, that within the
2 category of those items that are safety-related, some
3 have more critical characteristics, reclassified
4 characteristics than others.

5 For the ones that have most critical
6 characteristics, for example, if you were sampling, you
7 might say you would audit more frequently, so that
8 while you would apply all 18 of the criteria to all
9 safety-related items, you would use judgment in
10 how stringently you applied them. By that, in terms
11 of things like sampling frequency and inspection frequency,
12 auditing frequency, and so forth.

13 Q Well, without getting specific, can't you
14 imagine a situation where a safety-related component
15 would not need to have any attention paid to it with
16 respect to one of the criteria?

17 A If you have an example, I would be glad to
18 consider that.

19 Q I don't want to argue about specifics, but in
20 principle, don't you agree with that?

21 A No.

22 Q So you don't agree, then, that in applying
23 each criterion to each and every safety-related system,
24 structure or component, you run the risk of having
25 a huge paper mill that is not necessary.

j-3-4

1 A (WITNESS HUBBARD) I disagree with your
2 statement that quality is a huge paper mill.

3 Q I didn't say that, Mr. Hubbard.

4 A (WITNESS HUBBARD) The implication was that
5 quality is a paper mill.

6 Q I did not say that, Mr. Hubbard.

7 A (WITNESS HUBBARD) Okay. So my feeling is that
8 we are interested in the quality of the product, not
9 the quality of the paper. And however some people do
10 with the quality of the paper to see that the quality
11 of the product is adequate.

12 Q Mr. Hubbard, don't you agree if you are
13 overwhelmed with paper that might detract from the quality
14 of the quality assurance program?

15 A (WITNESS HUBBARD) That would be possible;
16 however, my experience has been that quality assurance
17 is to be documented, not a philosophy, so that the paper
18 that is there should be the right amount of paper,
19 and there are ways to make sure you don't have unnecessary
20 paper.

21 Q Would one of those ways be determination
22 that criterion X does not apply to this particular
23 component?

24 A (WITNESS HUBBARD) Not if it should apply.

25 Q Well, I'm assuming it should not.

j-3-5

1 A (WITNESS HUBBARD) Well, I would have to have
2 a more specific example. I can start through criteria
3 by criteria. For example, criterion (i) in special
4 processes, if you make a determination there are no
5 special processes, which is not to say criterion (i)
6 doesn't apply, but which is to say you made a decision
7 that there are no special processes, then you would
8 not have to go through the paperwork of special processes.
9 So that in that sense, I guess I would agree, but my
10 feeling is that you looked at that criteria to see
11 how it should be applied, so you made a judgment, and
12 there is some amount of documentation that shows you
13 made that judgment explicitly.

14 Q Fine. That was the answer I was looking for,
15 but we have been talking about the class safety-related.

16 Now, if we go to the class which is defined
17 by the Denton memorandum as not safety-related but yet
18 important to safety, and I think we agree that
19 general design criterion 1 requires a quality assurance
20 attention to those items, would you believe that all of
21 the 18 criteria should apply to each and every one of
22 those structures, systems, and components in that class?

23 A (WITNESS HUBBARD) No.

24 Q How would you decide which ones did?

25 A (WITNESS HUBBARD) I think I would use techniques

1 very similar to that used by EG&G. I would review the
2 FSAR. I would review the emergency operating
3 procedures to see how particular devices are used. I
4 would look to things of that sort. I would look at any
5 results of a system interaction study, as we've suggested,
6 to see how its failure might influence something else
7 that is significant during particular events, and I would
8 also consider, as I said before, how many types of QA
9 programs I really want to have, because if I train people
10 to do more -- to do things more than one way, there
11 are some difficulties with that.

12 So I would make a judgment based on all of
13 those factors.

14 Q You've described some techniques, and you
15 wind up making some judgments; is that correct?

16 A (WITNESS HUBBARD) Yes, I do, Dr. Morris --
17 or Judge Morris. However, there are certain things that
18 I would take as a given that, first of all, it should be
19 a documented program and, second of all, I should have
20 a list of the equipment that this particular program
21 applies to, and then for each item on that list, then I
22 would make some decision of how much of the 18 criteria
23 to apply.

24 Q For safety-related equipment, I believe that
25 the standard is Appendix A, part 50, as to what you are

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1 trying to achieve.

2 Am I right in that?

3 A (WITNESS HUBBARD) You mean Appendix B, Part 50?
4 You said Appendix A, Part 50.

5 Q I meant Appendix A, Part 100.

6 A (WITNESS HUBBARD) Oh, Appendix A, Part 100
7 is the definition of safety-related items. Yes, sir.

8 Q And for the class important to safety but
9 not safety-related, do you recall the definition there?

10 A (WITNESS HUBBARD) I have the definition that is used
11 by Mr. Denton in his memo. I also have the definition
12 as applied by EG&G to the category 1, 2, and 3.

13 Q Well, just to have it handy in the record,
14 do you want to quote the Denton definition?

15 A (WITNESS HUBBARD) Yes, sir. The Denton
16 definition was included as in Attachment A to the prefiled
17 testimony on Contention 7B by the County. It says that
18 the definition is from 10 CFR 50 Appendix A, General
19 Design Criteria, and it is "those structures, systems,
20 and components that provide reasonable assurance that the
21 facility can be operated without undue risk to the health
22 and safety of the public."

23 Further, it expanded that to say that
24 encompasses the broad class of plant features covered not
25 necessarily explicitly in the general design criteria that

j-3-8

1 contribute in an important way to a safe operation and
2 protection of the public in all phases of and aspects of
3 facility operation, that is normal operation and
4 transient control, as well as accident mitigation,
5 and it goes on to say this includes safety grade or
6 safety-related as a subset.

7 Q In establishing a judgment of not undue risk
8 and reasonable assurance of that judgment, what criteria
9 are used?

10 A (WITNESS MINOR) Criteria that would be
11 applied there would normally be a Staff decision and
12 not one of ours. They have certain regulations that they
13 have to comply with, and they have certain release rates
14 that are allowed, and they would try, of course, to
15 include, I assume -- I'm not a member of the Staff here,
16 but I'm making my assumptions here -- it would include
17 challenges to the safety systems, damage to PO,
18 and so forth, as well as releases off site, and it
19 would include some of the less physically damaging events,
20 such as the reduction of safety margins, which would put
21 the plant in a less safe condition.

22 That's my personal view.
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25

1 Q Well, I'm seeking your understanding how
2 these things are done, so is it correct to say it would
3 be done in the framework of existing rules and
4 guidance of the Commission?

5 A (WITNESS MINOR) I think probably Dr. Mattson
6 would be the right one to ask this question.

7 Q I'll ask him, too.

8 A (WITNESS MINOR) I'm not certain exactly what
9 the Staff would do in this specific case. I've tried
10 to give you my perception of what I would consider
11 appropriate.

12 Q One reason I'm asking you was to get your view,
13 because in this class of nonsafety-related but important
14 to safety the Staff does not review this area. It
15 is left to the Applicant or the Licensee; isn't that
16 correct?

17 A (WITNESS MINOR) Well, the regulation?

18 Q In general.

19 A Regulations calling for this category of
20 equipment to be covered, the GDC apply, important to
21 safety is throughout the regulations, so they do treat it
22 and they do make reviews of Applicant's compliance with
23 the regulations. So I'd have to say they do review this
24 to some extent.

25 Q Well, to some extent they do and I'm sorry I

1 oversimplified this. There are certain systems which
2 are specifically called out in the safety review plan and
3 are required to be dealt with in the FSAR, but there are
4 others that are not; isn't that correct?

5 A. (WITNESS HUBBARD) I haven't made a detailed
6 study of that, Judge Morris; however, one of the things
7 that was done in the EG&G study was to identify if
8 items that might be important to safety but were not
9 covered by the standard review plan in some way, and
10 my recollection is that the majority of the items that
11 might be considered important to safety were covered in
12 some way in the standard review plan in terms of design
13 requirements.

14 I think there is an important concept and that
15 is that we've been talking a lot of GDC-1, which is
16 quality assurance, and some of the comments that Mr. Minor
17 and Mr. Goldsmith and I made has to do with a quality
18 assurance program to implement GDC-1.

19 As you are aware, a majority of the GDC and a
20 number of them cited in 17-B use the words "important
21 to safety," so there are other things like physically
22 independent and power buses and things like that
23 where the words important to safety are used in the
24 general design criteria. And in this aspect, my
25

1 understanding of this is that the Staff do some amount of
2 review.

3 Q If I may repeat myself, GDC-1 does not
4 require that the Applicant or Licensee submit his list or
5 plan for those items which are not safety-related but
6 important to safety.

7 To me, this means that if there is a quality
8 assurance program for these items important to safety,
9 it has to be designed by the Applicant or Licensee,
10 and we would have to decide what things the failure of
11 which would produce undue risk to health and safety of the
12 public or get reasonable assurance that the risk to the
13 health and safety of the public is not going to occur,
14 and I'm looking for ways for the ultimate decision of
15 what -- how should that be determined.

16 I think what you're telling me is that there
17 is no specific recipe for this but there is guidance
18 given in the Commission's rules, regulations, and guides.

19 A. (WITNESS HUBBARD) Judge Morris, I believe there
20 is no recipe given for safety-related items. Much like
21 items important to safety, the Applicant has to decide
22 what is on the safety-related items list. The Applicant
23 has to refine the program and document it, and third, the
24 Applicant needs to decide what sampling frequency, inspection
25 frequency and so forth to be used for safety-related items.

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1 And I think the same concept applies to -- well, add then
2 the NRC reviews it to see if it is adequate and inspects
3 it to see if it is implemented in the I&E function.

4 I would look to important to safety, quality
5 program should be done the same way, that you have
6 a list, you have a program, you review the program and
7 then you review the implementation of that program.

8 A. (WITNESS MINOR) Dr. Morris, I agree it is also
9 important to note here we are talking a little bit in a
10 hypothetical, but if you look at the specific example
11 of Shoreham where you have a utility that has been recal-
12 citrent or at least reluctant to accept the definition
13 of these terms and the application of these terms,
14 it would seem to be more necessary to have such a list
15 even if the regulations did not call for it, just to be
16 sure they did comply with the specifics of the regulations
17 and the general design criteria.

18 Clearly, I think there is an implication for
19 the need for listing of structures, systems and components
20 in various places in the regulations, including QA,
21 including section 3, to make sure that they are properly
22 identified.

23 Q I think we probably ventilated the subject
24 enough at this point.

25 Yesterday, Mr. Minor, I started to ask you a

1 question. I started to ask it of Mr. Goldsmith and it was
2 your territory, so we'll come back to that one.

3 As I said, I believe you made the statement
4 that Phase 1 of the systems interaction program of the
5 Staff was either complete or nearing completion. Do you
6 recall that?

7 A. (WITNESS MINOR) Yes, I do. I believe we were
8 talking about the statement in NUREG-0510 at that time.

9 Q That's correct.

10 A. (WITNESS MINOR) Yes.

11 Q If you look at page A-12 --

12 A. (WITNESS MINOR) Yes.

13 Q In the last full paragraph that begins
14 "The contract effort ..."

15 A. (WITNESS MINOR) Yes.

16 Q And go to the penultimate sentence that
17 says the "investigation will then identify where NRC
18 review procedures may not have been properly something these
19 Interactions..."

20 Do you see that?

21 A. (WITNESS MINOR) Yes.

22 Q Do you know whether that's been accomplished?

23 A. (WITNESS MINOR) My understanding is that one of
24 the preliminary events to having Phase 1 complete was that
25 the Sandia report would be issued. At the time this

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1 document was issued they expected the entire Phase 1 to be
2 completed sometime in September of 1979. The actual Sandia
3 report didn't issue until, I believe, it was April of 1980
4 or something of that nature. I could check that.

5 But anyway, sometime after that, and that is being
6 reviewed at this time.

7 I don't know that that last step has been completed
8 at this time.

9 But the major effort which was to get the report
10 completed and to get it in the hands of the reviewers
11 has been completed, and is now being reviewed for consider-
12 ation. That is my understanding of the status.

13 JUDGE MORRIS: Thank you. That is all I have,
14 gentlemen.

15 JUDGE BRENNER: That completes the Board's
16 questions.

17 Ms. Letsche, redirect?

18 MS. LETSCHE: I have no redirect, Judge Brenner.

19 JUDGE BRENNER: Unless there is any follow up to
20 the Board's questions, we can dismiss these witnesses.

21 MR. EARLEY: One moment, Judge.

22 JUDGE BRENNER: Sure.

23 (Pause.)

24 MR. EARLEY: Judge Brenner, we have no further
25

1 questions of this panel.

2 JUDGE BRENNER: Does the Staff have any follow-up?

3 MR. RAWSON: No, sir; thank you.

4 JUDGE BRENNER: All right. You're out earlier
5 than you may have imagined, gentlemen.

6 Thank you very much for your appearance here.

7 Let's go to LILCO witnesses who as yet may
8 not have been fully identified.

9 MR. ELLIS: Judge Brenner, would it be
10 appropriate to take a break before we did that? I can
11 identify the panel now to the Board. I do have an
12 organizational chart that I would also like to hand out to
13 the Board that I will take up with the panel. It's a change
14 in the organization as of April 1.

15 JUDGE BRENNER: All right. If you want to take
16 break, we'll do that right after you do the first
17 things.

18 I'm correct in the only remaining order of
19 business?

20 MR. ELLIS: It is in my understanding, yes, sir,
21 that's all we have left.

22 JUDGE BRENNER: Staff is nodding yes.

23 MS. LETSCHE: Mr. Mattson is not going to be
24 back on to talk about Salem; is that correct?

25 MR. ELLIS: That's right.

1 MS. LETSCHE: Thank you. I didn't realize that.

2 JUDGE BRENNER: That hasn't been stated, either.

3 Go ahead and do what you want to do now and

4 we'll break.

5 MR. ELLIS: All right, sir.

6 Let me hand to the Board and to the parties a
7 memorandum, a three-page document dated March 28, 1983,
8 first two pages of which are a memorandum signed by
9 Mr. M. S. Pollock, Vice-President, Nuclear, and attached
10 a third page which is an organizational chart.

11 If the Board wishes, I can put the panel on,
12 we can swear the panel, I can ask preliminary questions.
13 But I wanted to take a break before so that we wouldn't have
14 the whole morning without a break.

15 JUDGE BRENNER: We would have taken one after.
16 We can wait. No sense putting them on just for this and
17 having them move off again. You plan on putting this
18 in evidence; is that what you're telling us?

19 MR. ELLIS: Yes, sir. I'll do that.

20 Let me also identify for the Board that the
21 panel will include Mr. Pollock, as I indicated yesterday,
22 Mr. Museler, Mr. Rivello, Mr. Dawe, and Mr. McCaffrey.

23 JUDGE BRENNER: All right. Let's break until
24 10:15.

25 (A brief recess was taken at 10:00 a.m., to
reconvene at 10:15 a.m.)

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1 JUDGE BRENNER: We're back on the record, Mr.
2 Ellis.

3 MR. ELLIS: Judge Brenner, we have one
4 preliminary matter that Mr. Earley raised earlier this
5 morning.

6 JUDGE BRENNER: Yes, go ahead, Mr. Ellis.

7 MR. EARLEY: Judge, with respect to LILCO
8 agency PO in the QAC record, additional exhibit dated
9 March 30, 1983, the County indicated this week they would
10 not oppose that motion. I have here the additional
11 exhibit that we are proposing. It is entitled "List of
12 LILCO/Stone and Webster Audits Reviewed by NRC Staff
13 Witnesses in Preparation for Oral Testimony," and
14 I request that that be marked as LILCO Exhibit 74, and
15 admitted into evidence.

16 JUDGE BRENNER: If you said this, I'm sorry,
17 I didn't hear, Mr. Earley. The County did in fact confirm
18 they had no problem as Mr. Lanpher predicted.

19 (The document referred to was
20 marked for identification as
21 LILCO Exhibit No. 74, and
22 admitted into evidence.)

23 JUDGE BRENNER: Again, we're admitting it into
24 evidence, but that distinction isn't important, given
25 a document of this nature.

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MR. EARLEY: I understand that.

JUDGE BRENNER: All right. Thank you, Mr.

Ellis.

We have to swear in two of the witnesses.

MR. ELLIS: Yes, sir. Mr. Pollock and Mr. Reveley. have not testified before.

(LILCO Exhibit No. 74 follows:)

PENGAD CO., BAYONNE, N.J. 07002 FORM 2094

LIST OF LILCO/S&W AUDITS REVIEWED
BY NRC STAFF WITNESSES IN
PREPARATION FOR ORAL TESTIMONY

Audits listed in December 2, 1982 letter from L. Lanpher to B. Bordenick:

FQC 21, B.9, D. 14	F.A. 803, 4.1
F.A. 340, 4.1	FQC 34, N.2
F.A. 376, 4.3	F.A. 1275, 4.2
F.A. 679, 4.2	F.A. 1086, 4.1, 4.2
F.A. 699, 4.1	F.A. 1180, 4.1, 4.3
F.A. 721, 4.3	F.A. 1301, 4.1
FQC 21, D.18	F.A. 1313, 4.1, 4.2
FQC 23, D.5(2)	Quarterly Report 5/30/80
F.A. 443, 4.1	Quarterly Report 7/22/80
F.A. 679, 4.3	Quarterly Report 11/13/80
F.A. 740, 4.2	Quarterly Report 2/17/81
	Quarterly Report 8/31/81
	Quarterly Report 12/3/81

Audits listed in December 10, 1982 handwritten memo from L. Lanpher to B. Bordenick:

EA 19, 2.B.2
EA 22, 021(2)
EA 23, 037
EA 27, 078
FQC 14, A.1
FQC 14, B.2, D.2, D.3, D.4
EA 18, p.2 #4
EA 30, 104(4)
EA 38, 141(1)-(2)

Quarterly Reports listed in SC Exhibit 63:

May 4, 1978
August 31, 1978
November 3, 1978
January 29, 1979
April 16, 1979
August 20, 1979
May 30, 1980
July 22, 1980
November 13, 1980
February 17, 1981
August 31, 1981
December 3, 1981

APR 2 1982
Lilco Ex. 74
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1 WALTER POLLOCK,
2 JAMES RIVELLO,
3 WILLIAM MUSELER,
4 GEORGE DAWE,
5 and
6 BRIAN McCAFFREY

7 were called as witnesses on behalf of LILCO, and
8 having been first duly sworn, were examined and testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. ELLIS:

12 Q Mr. Pollock, would you state your full name
13 and your position with the Long Island Lighting Company,
14 please.

15 A (WITNESS POLLOCK) My name is Millard Pollock.
16 I'm vice-president of nuclear for the Long Island
17 Lighting Company.

18 Q Mr. Rivello, would you state your name for the
19 record, please, sir, and your position with Long Island
20 Lighting Company.

21 A (WITNESS RIVELLO) James Rivello, Shoreham
22 plant manager.

23 Q Mr. Museler, will you do the same, please,
24 sir.

25 A (WITNESS MUSELER) My name is William J. Museler.

1 I'm director - office of nuclear.

2 MR. ELLIS: Judge Brenner, I might point out
3 that with respect to Mr. Museler, who has testified
4 previously in this proceeding, we did not go back and
5 look at the transcript for his qualifications, but they
6 are already a part of the record.

7 JUDGE BRENNER: That's fine. And the same
8 with respect to Mr. Dawe and Mr. McCaffrey?

9 MR. ELLIS: Yes, sir. Mr. Museler's would need
10 to be ammended in accordance with the memorandum that
11 I will ask Mr. Pollock about here briefly.

12 BY MR. ELLIS:

13 Q Mr. Dawe, will you state your full name and
14 position, please.

15 A (WITNESS DAWE) My name is George F. Dawe.
16 I'm employed by Stone and Webster. I'm supervisor of
17 project licensing.

18 Q Are your qualifications essentially the same
19 as they appeared in the record of this proceeding
20 when you first testified on this contention?

21 A (WITNESS DAWE) Yes, sir, they are.

22 Q Mr. McCaffrey, would you state your name and
23 your position with the Long Island Lighting Company, please.

24 A (WITNESS MC CAFFREY) My name is Brian
25 McCaffrey. I'm manager of nuclear compliance and safety

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1 for Long Island Lighting Company.

2 Q Mr. McCaffrey, were your qualifications also
3 entered previously in connection with this contention?

4 A (WITNESS MC CAFFREY) Yes, they were, and
5 they are still correct.

6 Q Mr. Pollock, do you have before you a memorandum
7 dated March 28, 1983, signed by you, concerning an
8 organization change?

9 A (WITNESS POLLOCK) Yes, I do.

10 Q Is that a three-page memorandum including a
11 third page which is a block diagram?

12 A (WITNESS POLLOCK) That's correct.

13 Q What is the purpose of the memorandum?

14 A (WITNESS POLLOCK) At this stage of the
15 construction progress on the nuclear unit, we are beginning
16 to phase down the significant construction effort. The
17 preoperational test program is well along in its
18 progress to proving the integrity of the system, and its
19 facilities, and the operational aspects of the plant are
20 now coming into greater focus.

21 The organizations in the past have been
22 modified to address the key areas of concern and emphasis
23 that had to be applied to progressing is a satisfactory completion of
24 this facility.

25 At this stage of the game -- just prior to

1 this change, I had reporting directly to me Mr. Museler,
2 as the engineering, construction and licensing manager
3 in the field; and Mr. Rivello, the plant manager,
4 Mr. Youngling, the startup manager; Mr. Bender, who is
5 my manager of nuclear engineering; and Mr. Kubinak,
6 who is a manager of nuclear operations support division.

7 As we approach the final operational phase
8 of this plant, the cognizance of senior management
9 and concern is one of a much broader scope of
10 involvement, and I felt it necessary to bring the
11 efforts of plant testing and completion, the plant
12 construction effort under the plant manager who had
13 the responsibility of consolidating all of those, and
14 bringing them into focus for a safe operating facility
15 from an operational point of view.

16 As a result, I also have the responsibility of
17 assuring that we are addressing the various aspects of
18 achieving a satisfactory operating license on the plant, which
19 is not just the licensing hearing process in which we are
20 involved here, but also response to the NRC Staff open
21 items, the SER open items that we have, to resolve
22 those in a timely manner, and I felt it necessary to bring
23 someone into that position and address those specifically,
24 that has the background and a very thorough background
25 in that vein.

1 As a result, I brought Mr. Museler into my
2 office, or reassigned him in my office as director,
3 office of nuclear. His prime concern, one, being to see
4 that the appropriate interfaces of licensing are made
5 and all the issues affecting the licensing effort are
6 resolved in a proper manner; to see that the engineering
7 effort that has been in the past very much in the hands
8 of the on-site organization is appropriately transferred
9 to my nuclear engineering department; and to address other
10 matters that come to the attention of my office.

11 Also, this draws me to some degree away from a
12 role that I had been playing very much as a site manager,
13 if you will, trying to coordinate the specific efforts on
14 the site, more appropriately aligned in this vein
15 by this realignment.

16 MR. ELLIS: Judge Brenner, I don't know whether
17 the Board wishes -- we can mark this as LILCO Exhibit
18 75, if the Board wishes. We merely used it to advise the
19 Board of the change that occurred on April 1 in the
20 organization, to describe the change in the structure.

21 JUDGE BRENNER: Well, it has a limited purpose
22 here, but identifying the current positions of some of
23 the witnesses here, and as you state, normally this
24 would have just been the correspondence between LILCO and
25 the Staff which the parties and the Board receive information

1 copies of, not necessarily this piece of paper, but the
2 substance contained therein.

3 Is that accurate; was this reported to the
4 Staff, or will be as part of an amendment to some
5 official document before the Staff, Mr. Pollock?

6 WITNESS POLLOCK. Yes, it will be. It
7 was discussed verbally with the Staff and was discussed
8 with senior Staff representatives before I made the
9 appropriate moves.

10 JUDGE BRENNER: All right. Why don't we admit it
11 into evidence but not for the purpose of the organization
12 only for the limited purpose of showing the current
13 positions of Mr. Museler and Mr. Rivello, and we have
14 Mr. Pollock's description of this which in
15 part focuses on some of his responsibilities as he
16 discussed in passing.

17 WITNESS POLLOCK: Judge Brenner, if I might add
18 to that, with some concern of our interpretation of what
19 I said, I went so far in the organization. If I went
20 further down -- and I'll be happy to do it -- I have
21 realigned responsibilities below that, if I could
22 direct your attention to the third page of this, which is
23 the block diagram, and I don't have the prior one available
24 to me, there was not a position of chief maintenance
25 engineer established in my organization.

1 Maintenance was handled strictly by the
2 maintenance engineer reporting to the operating engineer.
3 With the cognizance in mind of coming into a complex
4 operating facility, I have moved the maintenance function
5 from underneath the chief operating engineer, so that he
6 can concentrate on the aspects of the operational
7 responsibilities within the plant.

8 I have moved the instrument and control from
9 underneath the chief technical engineer so that
10 his concentration will be strictly in a technical area
11 and technical aspects of the organization, and established
12 a new position of a chief maintenance engineer, which
13 defined here, shows that the maintenance -- current
14 maintenance engineer will report within that organization;
15 the instrument and control engineer will report within
16 that organization; outage planning and coordination will
17 report within that organization; and in the future,
18 design modification groups, which currently are up
19 above reporting to the plant manager, will move down into
20 that organization, the attempt being the recognition of what
21 is currently in the construction effort to achieve
22 and appropriately design and construct the plant, to bring
23 it into focus under a higher level of management, so
24 there is just more than just the top of the realignment.
25

1 JUDGE BRENNER: I didn't mean to imply that your
2 prior description was of everything involved in the
3 realignment; in fact, quite the contrary. I was trying
4 to emphasize that we were looking at it in the context
5 of the issues before us today and certainly not going back
6 to issues which at this point may be related to a
7 contingent such as Contention 13(b) and other things
8 of that nature. So I think you made the right decision
9 the first time on what you didn't include.

10 I'm not saying at this point that the last
11 statement you just made is not pertinent to our inquiry,
12 but I don't see its pertinence at this point, its
13 direct pertinence.

14 Let's mark this as Suffolk County -- LILCO
15 Exhibit 75.

16 Did you fully identify it, Mr. Ellis?

17 MR. ELLIS: Yes, sir, I think I did. I'll do it
18 again.

19 LILCO Exhibit 75 is a March 28 two-page
20 memorandum from Mr. Pollock, subject, organization change,
21 office of Vice President, Nuclear, and it includes a
22 third page, an attachment, which is an organizational
23 diagram.

24 JUDGE BRENNER: Are there any objections to
25 admitting this in evidence for the limited purpose that I

1 indicated?

2 MS. LETSCHE: The County has no objection.

3 MR. REIS: Staff has no objection.

4 JUDGE BRENNER: Let's admit it in evidence and
5 for convenience bind in a copy at this point, in addition
6 to having the exhibit copied.

7 (The document referred to was
8 marked for identification
9 as LILCO Exhibit No. 75 and
10 was received in evidence.)

11 (LILCO Exhibit 74 follows.)

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APR 8 1983

Libs Ex. 75 Id EV ✓
CARL W. GIRARD

March 28, 1983

To: All Officers, Department and Division Managers and Supervisors

Subject: Organization Change - Office of Vice President-Nuclear

As Shoreham Nuclear Power Station approaches its operational phase the realignment of management responsibilities as defined in the attached organization chart is being made April 1, 1983 to more effectively address the difficult concluding efforts required to acquire an operating license and achieve a timely commercial operating status:

- W. J. Museler, Construction and Engineering Manager, will be appointed Director-Office of Nuclear to aid the undersigned in the coordination of the office's activities with particular emphasis on direction of all licensing related efforts required to achieve an operating license and the transition of final engineering efforts to the Nuclear Engineering Department. He will have full authority to represent the Vice President-Nuclear in his absence and in other matters as directed.
- J. Rivello, Plant Manager, will, in addition to the Plant organization, undertake direction of the remaining Construction and Startup effort until the plant achieves commercial operating status. J. Rivello will continue to report directly to H. S. Pollock, Vice President-Nuclear.
- A. R. Muller, Operating Quality Assurance Engineer, will continue to report directly to J. Rivello.
- E. J. Youngling, Startup Manager, will report to J. Rivello, Plant Manager, to conclude remaining test requirements and develop the necessary transition to an operating status.
- W. Hunt, will report as Construction Manager to J. Rivello, Plant Manager, and assume responsibility for conclusion of remaining construction efforts required to achieve a commercial operating status.
- W. E. Steiger, Chief Operating Engineer, will, as Operations Manager, assume responsibility for direction of the Plant Operating Organization and will report to J. Rivello, Plant Manager. The Chief Operating Engineer, Chief Technical Engineer, Chief Maintenance Engineer and Plant Administrative Coordinator will report to W. E. Steiger

- J. A. Notaro, Operating Engineer, will assume the responsibilities of Chief Operating Engineer reporting to W. E. Steiger. Operations, Security and Training will report to J. A. Notaro.
- D. D. Terry, Assistant Startup Manager, will assume new responsibilities as Chief Maintenance Engineer reporting to W. E. Steiger. Maintenance, Instrument and Control and Outage Planning and Coordination will report to D. D. Terry.
- L. J. Calone, Chief Technical Engineer, will report to W. E. Steiger, Operations Manager. Tech Support, Reactor Engineering, Health Physics and Radiochemistry will report to L. J. Calone.
- R. A. Kubinak, Manager Nuclear Operations Support, and D. J. Binder, Manager Nuclear Engineering, will continue to report to M. S. Pollock, Vice President-Nuclear.

Realignment of related organizational responsibilities will be developed to support this final plant completion effort and personnel assignments will be announced by the appropriate managers.

M. S. Pollock

M. S. Pollock
Vice President-Nuclear

Attach.

OFFICE OF NUCLEAR

APRIL 1, 19

VICE PRES. NUCL.
M. S. POLLOCK

DIRECTOR-
OFFICE OF NUCLEAR
W. J. MUSELER

MGR. NUCL. ENGRG.
D. J. BINDER

- FUELS
- NUCL. SYSTEMS ENGRG.
- PROJECT ENGRG.*
- LICENSING TECH. SUPPORT

PLANT MANAGER
J. RIVELLO

OPERATING QA
A. R. MULLER

MGR. NOSD
R. A. KUBINAK

- SAFETY & COMPLIANCE
- STAFF SUPPORT
- PROJECTS

STARTUP MGR.
E. J. YOUNGLING

OPERATIONS MGR.
W. E. STEIGER

CONSTR. MGR.
W. HUNT

PLANT ADMIN.

*To be transferred
from Project to
Nuclear
Engineering.

CHIEF OPER. ENGR.
J. A. NOTARO

- OPERATIONS
- TRAINING
- SECURITY

CHIEF TECH. ENGR.
L. J. CALONE

- HEALTH PHYSICS
- RADIO CHEM.
- REACTOR ENGRG.
- TECH. SUPPORT

CHIEF MAINT. ENGR.
D. D. TERRY

- MAINTENANCE
- INSTR. & CONTROL
- OUTAGE PLANNING & COORDINATION

1 JUDGE BRENNER: I would be remiss if I didn't
2 comment that we appreciate the presence of the witnesses
3 here on such short notice and also appreciate the
4 undoubted efforts of other counsel to arrange it. We
5 explained yesterday our view of why the same time frames
6 that we would expect the parties to adhere to would
7 not apply to the Board. The difference is that the Board
8 has an earlier appreciation where some of the testimony
9 is going to go in more detail than counsel
10 sometimes. We have to react to things as we hear them
11 and we did that, so we appreciate the presence of
12 these witnesses, given the short notice. Thank counsel
13 and witnesses.

14 Judge Morris will start off in the questions,
15 unless Mr. Ellis, did you have anything else?

16 MR. ELLIS: If the Board would like, I can ask
17 further questions by way of introduction, but if the
18 Board doesn't think it is necessary, I think the panel
19 is ready for examination.

20 JUDGE BRENNER: I guess I don't know for sure
21 it is necessary unless I know what you're going to ask.

22 MR. ELLIS: I'm prepared, the panel is prepared
23 to be examined.

24 JUDGE BRENNER: All right.
25

1 BOARD EXAMINATION

2 BY JUDGE MORRIS:

3 Q I'll address my questions to you, Mr. Pollock,
4 but the general practice here is that unless otherwise
5 directed by the Board, the Board can consult among
6 itself -- the panel can consult among themselves to
7 decide who best should answer or supplement a previous
8 answer.

9 A (WITNESS POLLOCK) Thank you. I understand.

10 Q Mr. Pollock, we understand that you met with
11 the Staff last month to discuss licensing of Shoreham
12 in the specific context of interpretation of the Denton
13 memorandum which defines important to safety and safety-
14 related, and that as a result of that, the Staff decided
15 to request two actions of LILCO: one of those actions
16 was an amendment to the application which would amend the
17 FSAR in several respects to reflect the actions that
18 LILCO would take with respect to the treatment of certain
19 systems within the plant.

20 The other action, and I'll ask you whether it was
21 your understanding -- was that LILCO should accept the
22 Denton definition of that class important to safety?

23 A (WITNESS POLLOCK) Yes, we did meet with the
24 Staff and I met personally with the Staff subsequent to
25 the rather significant discussion which is already a matter

1 of testimony in the past of some difficulty in resolving in
2 our minds exactly what the internal Denton memorandum and
3 definition meant, being an internal memorandum, not a
4 specific issue.

5 We had concerns with it. My understanding
6 in my discussions with the Staff and our presentation
7 to them was that functionally we had an understanding,
8 I felt I had an understanding with the Staff that
9 functionally our revisions to the FSAR, the commitments
10 that I had made, our interpretation of the intent of the
11 Denton memorandum was being met by what we were doing.
12 It was so stated to me as I read it and discussed it with
13 senior staff that the issue of agreement to the specific
14 language in the Denton memorandum was to be presented in
15 such a way that it would be a legal definition.

16 It is on you -- it is not yet totally
17 resolved as a matter of regulation, is not resolved as a
18 matter of regulatory guidance for me or an applicant, and
19 that in this forum of licensing on Shoreham, it was
20 going to be presented to the Board, asking the Board to
21 rule on whether Shoreham should agree to -- should have
22 to agree to the specific wording.

23 I did not interpret it as a report of my
24 negotiations, that that was part and parcel of our
25 agreement. I have difficulties with the wording and this

1 is the reason my staff represented the position in my office
2 and the earlier testimony and when we could not resolve that
3 in the testimony I undertook to meet with the senior
4 staff personnel.

5 As I read the wording, it is vague, it is
6 indefinite; it is open-ended at best. And as
7 Dr. Mattson stated yesterday -- and I fully agree with him --
8 I don't know where it's going. I don't know what the limit
9 is.

10 I'm the responsible officer to see that this
11 plant is run and run safely, put together safely, as a
12 result of all our efforts in the design and construction
13 and testing program have been one to address what is the
14 relative significance of all systems, be they safety-related,
15 and, of course, we've testified in the past important to
16 safety, in our judgment, falls within the regulatory
17 definition of safety-related.

18 What is the level of requirement relative to
19 the rest of the plant? My approach with the Staff was
20 one of I can't interpret the end point or what the
21 definitions that you were suggesting, and I accept on the
22 surface what they mean.

23 Let me go to work and offer what I think I
24 understand the intent of that to be.

25 That I did. And I did in at least two letters,

1 I know, directly to Mr. Denton and this was subsequent
2 to the meetings that we had down there. I met twice, to
3 my recollection, with Staff. I had several phone
4 conversations and met with them and submitted letters to them.

5 The last letter was as a result of further
6 discussion with the Staff that said be more definitive in
7 the programs that we have in place, that we are going to
8 continue. At that time they suggested "give us your
9 definitions of what you're going to do as far as the FSAR,"
10 which, of course, we prepared.

11 "How would you show us in that FSAR how you
12 will implement what you say you are going to do?"

13 We did prepare samples in two areas and I
14 believe, if I'm not mistaken, those letters -- my letters
15 are in evidence. We prepared two examples.

16 Q. You're referring to the March 2nd and March 8th
17 letters?

18 A. (WITNESS POLLOCK) Yes, sir, my letters to
19 Mr. Eisenhut of March 2 and March 8; that's correct.

20 I submitted that. I had subsequent discussions
21 with the Staff and of course coming back into the licensing
22 process, they were concerned with the issue that was
23 outstanding, could it be resolved.

24 I understood that we had agreement that the
25 LILCO approach to the concept being conveyed in the

1 Denton memorandum and those wordings are appropriately being
2 addressed by LILCO in this manner. That is what I was
3 left with.

4 Q. Excuse me.

5 A. (WITNESS POLLOCK) Yes, sir.

6 Q. If I may interrupt, when you say that, do you have
7 in mind that the Staff has agreed that your quality
8 assurance program is equivalent to that they would impose
9 under their definition of an important to safety
10 category?

11 A. (WITNESS POLLOCK) Judge Morris, I really, in
12 our discussions I don't have a clear definition of what they
13 would impose as to a broad scope quality assurance
14 program. In very lengthy testimony and my recollection
15 of reading, we presented the method of assuring quality
16 standards during our design or construction, our testing
17 program, and my recollection was that we had concurrence
18 with the Staff that we had a good program, that in essence relative to
19 the important features as important functions of equipment in the
20 plant we were appropriately addressing those. We were
21 appropriately applying a quality standard review program.

22 In my discussions then at the meetings I held
23 with Staff relative to this current issue, there was no
24 question in my mind or my commitment to them that relative
25 level and approach to evaluation of all equipment in the

1 plant, relative to its role that it plays in the plant
2 and its interface that it plays in the plant, will be accorded
3 the same quality standards and same quality approach.

4 We presented, and it is outlined in one of
5 the letters so I won't dwell on it, various programs that
6 we have. Preventive maintenance programs, surveillance programs,
7 operator surveillance programs, to assure us of that and
8 that was reinforced by a question to me, well, "show us really
9 how you are going to do it," and we prepared and said this is
10 the way we will do it, as far as the FSAR is concerned.

11 Now, I don't know what the wording in Mr. Denton's
12 letter really says as an end result. My concern with
13 that, as a responsible officer for this facility and
14 responsible to see that my people are moving
15 to orders and well-defined orders to run this plant and run
16 it properly, have a well-defined set of goals to work with.
17 And I could not develop that by saying "We will accept
18 wording per se." I am not disagreeing with philosophy
19 by any means.

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1 Q Excuse me just a minute.

2 Do you agree that there is a class of
3 important to safety structures, systems and components
4 that is larger than the class of only safety-related
5 structures, systems and components?

6 A (WITNESS POLLOCK) I guess my answer to that
7 has to be a little bit two-fold, and I don't mean it to
8 sound as if I'm hedging.

9 On a regulatory sense, and, of course, that's
10 what we are very specifically governed by, no, I don't
11 agree with that -- important to safety and safety-related
12 are very specifically defined by regulation.

13 The balance of plant or nonsafety-related
14 have a certain functional safety aspect in the plant,
15 and is that graded? Positively, right from a -- as I've
16 defined to my people many times -- a hard line, if you
17 drew a bar graph and said, this is safety-related,
18 where do you go? Step right over that line, you've
19 got something that is not specifically defined but it has
20 a high level of significance to support safety systems
21 in the plant, and shut down of the plant.

22 That is afforded or accorded a higher level
23 of preventative maintenance programs within our programs.
24 It's afforded a higher level of surveillance, and it
25 is graded accordingly. That we have done throughout our

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1 construction program and design program. That's what we
2 convey to the Staff that we continue in our operational
3 aspect.

4 Q Is this program documented?

5 A (WITNESS POLLOCK) The program I've just
6 defined, yes, sir, it certainly is documented. It is a
7 matter of record and our preventative maintenance programs
8 are a matter of record.

9 We are in a pre-actual operational functional
10 stage of proving them out, and it is part of our
11 records, part of our operational procedures right now.

12 Q Is it your position that you comply with
13 general design criterion 1?

14 A (WITNESS POLLOCK) Yes, sir.

15 A (WITNESS DAWE) If I could supplement just a
16 little bit.

17 I don't think we ever implied nor do we
18 imply, nor does the term "nonsafety-related" imply that
19 an item in that category has no safety significance. I don't
20 think there's anything that could be found in this record
21 that draws that implication, but as Mr. Pollock has
22 said, he has to interpret those regulations and assure
23 his compliance with them.

24 The definition of important to safety that is
25 now being introduced, which we believe is new, and not the

1 equivalent definitions that have been accepted in the
2 past, would not define those things that have to be done.
3 We believe that right now we are doing everything that
4 the Staff expects an Applicant to do. I think the
5 testimony in this record shows that as well. That's
6 why we have the agreement that the Staff has been
7 expressing that the plant is fine just as it is today.
8 But it is the vagueness in the definition to define
9 important to safety as anything that can affect in an
10 important way, that just doesn't provide the definition.

11 Nobody should assume that the term
12 "nonsafety-related" implies no safety significance.

13 Q Is that the only reason or basis on which
14 you're resisting acceptance of the Denton definition?

15 A (WITNESS POLLOCK) Yes, it is. My reading of
16 the words and what I judge to be my responsibility to
17 establish procedures that I can audit my own organization
18 against does not give me a definition or bounds under
19 which to operate, and that was my approach to the Staff
20 to say that I have exactly that problem with words, not
21 with philosophy; not with, as Mr. Dawe said, with any
22 implication or indication on our part that there is not
23 safety significance to every piece of equipment in that
24 plant, but how do I define it.

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j-7-4

1 Now, a request to accept the words of the
2 Denton memorandum led me, of necessity, to read those
3 words and say to me, what does it mean and how do I
4 establish programs by those words?

5 I can't do it. It's too open in its wording,
6 not in its philosophy. I then approached the Staff with
7 what I thought was the intent of it at this stage.
8 Here is how I want to show and prove that we are going to
9 approach that philosophy, develop our programs, that I can
10 audit against that, we can look at, and I thought we
11 had done that. What happens to the future, and this
12 was obviously part of the discussion, if the Staff and
13 according to the memorandum had indicated that
14 Reg. Guide should be changed, review procedures within
15 Staff should be changed, when they are changed, and they
16 are definitive as regulations are, we've stated
17 and committed, we have no problems.

18 Give us firm guidelines.

19 I can't responsibly look at that and say that
20 I can interpret what the end point is, and I made an effort
21 to interpret the intent and develop our programs.

22 Q The Staff on page 11 of its prefiled
23 testimony for this part of the proceeding has stated
24 that they have requested this Board to require as a condition
25 of licensing that you accept the Denton definition.

1 That's why we have this unusual proceeding this morning.
2 Some statements have been made as to what the
3 consequences would be of such a requirement, and I would
4 like to have your views on that.

5 A (WITNESS POLLOCK) Judge Morris, I don't know.
6 The wording to me is sufficiently vague and open-ended
7 that I don't really know. Can I hypothesize? I think
8 anybody can.

9 I can go to the point of saying, it is nothing.
10 We are doing it. In essence, my commitment to the FSAR, if
11 I interpret, and I have an acceptance by the Staff
12 which I thought I had, of, yes, that's our knowledge of
13 the intent, that's where we are now, I've done it. And I've
14 done it by the FSAR, the FSAR commitment will achieve
15 that, and we will in our procedures modify our procedures
16 accordingly.

17 So in that vein, I can say nothing. Nothing
18 would be involved, or some rewording, some paperwork
19 and man hours, that's not a significant item. But
20 open-ended as it is, and I could reread the words
21 again, they are so broad, they are so general, they
22 can lead to some very extensive things. And now this is
23 myself, my staff, my engineering expertise, sitting down and
24 saying, I said to them, I want you to brainstorm this
25 for me, and what do you think might happen. Well, they

1 just said "We don't know. How can we brainstorm
2 something that is wide open?"

3 That led to myself going back to the staff
4 and saying, "I can't commit to the words. What can we do
5 to go to work and reach the current agreement?" I'm
6 sorry. I don't know how to quantify it. I can't interpret
7 the words to -- if you gave me a hypothesis and said,
8 "Well, what if this," then obviously anyone could sit
9 down and say, what does that mean to us.

10 It's too open-ended, too ill-defined.

11 A (WITNESS MUSELER) Judge Morris, if I might just
12 add to that.

13 If you look at the wording in the Denton
14 memorandum, and then look at the generally accepted
15 definition of the word "safety-related," which has some
16 definite criteria that places items in that category,
17 and which allows us to categorize things in accordance
18 with that, and allows the Staff to review them in
19 accordance with that, those criteria are in our view
20 reasonably well-defined, and even with those criteria,
21 there are items for discussion on the fringes of that
22 definition.

23 That is a reasonably well-defined definition.
24 When one contrasts that with the available words with
25 the important to safety used in the Denton memorandum,

j-7-7

1 there are no similar firm definitions or firm criteria for
2 what that really means. We understand, in the
3 regulatory sense, very well, as does the Staff and everyone
4 that's been dealing in the industry, what the criteria
5 safety-related means. We also understand in our view
6 what the requirements are to apply to nonsafety-related
7 equipment in terms of its safety significance.

8 We've applied those throughout the design and
9 the construction of the plant by looking at the function
10 of those -- those systems and components, and making sure
11 that they performed adequately and that they did
12 not -- their function was supporting the safety systems of
13 the plant, and that they were designed so that they
14 would not produce negative effects from a safety
15 significant standpoint.

16 We understand how to do that for nonsafety-
17 related equipment. We've explained to the Staff, and
18 they've examined in some respects our program for how
19 we treat nonsafety-related equipment, including enhanced
20 surveillance techniques on some of them that are
21 clearly getting close to the safety-related definitions.

22 The Staff has said that they agree that the
23 way we have interpreted the safety significant
24 requirements for nonsafety-related equipment is appropriate,
25 so the Staff agrees with us that what we've done is

1 appropriate, and we believe that we meet the intent of
2 the regulations by the way we've done it. We believe
3 that we are going to maintain that meeting of the
4 regulations in the future by making sure that we
5 establish functionally equivalent programs throughout
6 the life of the plant to ensure that we apply the same
7 safety significance and that same thought processes
8 to all components, safety-related or nonsafety-related
9 throughout the life of the plant.

10 But we can't accept the definition that
11 in our words is not a definition. We just don't
12 believe that there are sufficient criteria in those words
13 for anyone to form an opinion on whether you meet
14 that definition or not.

15 Q Well, Mr. Museley, let me interrupt you.

16 There have been some assertions on the
17 record that essentially all of the class of important
18 to safety in Staff's definition is defined in
19 terms of what's specifically called out in the standard
20 review plan, what's required to be reviewed in the FSAR,
21 and Regulatory Guides.

22 Let me pose the question that if this were a
23 complete definition, and some have even said it would
24 be a simple matter to write a list by studying those
25 documents, if that were a complete definition, then not

1 quantitatively but qualitatively, what different
2 things would LILCO be required to do.
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1 A. (WITNESS DAWE) Judge Morris, I think today,
2 right now, this panel would concur unanimously probably
3 nothing because those guidance documents exist.
4 We are all aware of those guidance documents. We all
5 work to those guidance documents. It is a very clear
6 definition.

7 This hearing on this term has focused very
8 sharply on GDC-1. GDC-1 for quality standards and
9 QA, and certainly things like quality standards are very
10 clearly in the Commission's guidance documents. In
11 fact, the industry groups in this country work closely
12 with the Commission to develop those quality standards that
13 will apply in a uniform fasion.

14 There are other regulations. There are other
15 GDCs which have not been fully aired or discussed. Some
16 of them have been mentioned briefly in passing, in cross-
17 examination. For example, GDC-4 which requires
18 items important to safety to be qualified for abnormal
19 accident conditions up to and including loading.
20 There is no word "commensurate" in there. There is no word
21 "appropriate." It just says that. The guidance documents tell
22 us where that line stops. In fact, until the new EQA
23 came out, that line stopped at safety-related, that was
24 part of the equivalence that everybody understood.

25 If those guidance documents which are not

1 regulations change in the future, that's different from
2 a regulation changing in the future. There is a backfit,
3 must show substantial benefit to require backfit,
4 for example.

5 If something becomes important to safety --and
6 certainly we don't know where the bottom end of that is --
7 there is no backfit room any more. GDC applies because
8 it is important to safety.

9 Now, I'm not advocating that people won't come to
10 agreement. I'm just trying to give one example of
11 Mr. Pollock's concern as the man who has to audit this
12 operation, as to where we found the definition to be
13 undefined. I think there is a meeting of the minds
14 today. I don't think the Staff would say this plant is
15 adequate today unless all that review had taken place and
16 all things have been found acceptable.

17 Q Mr. Dawe, I would like to confine the discussion
18 for at least a little while to this hypothesis that I gave
19 that this class of things could be defined would not be
20 open-ended and would not be expanded from those things
21 which are already in the Commission documents and to
22 try to look at the potential consequences.

23 You said essentially nothing, I believe, that
24 was the response.

25 Now, let me suggest, in that response, did you

1 consider any changes in reporting requirements to the
2 Commission or any actions which might be taken to
3 facilitate Commission inspection to determine compliance?

4 A. (WITNESS POLLOCK) I'm going to ask Mr. Museler
5 to address that. I can, but I think more specifically to your
6 question, he could handle it more adequately for me.

7 A. (WITNESS MUSELER) Judge Morris, I guess if one
8 were to say that those definitions that you just listed
9 were the basis for defining a list of what needed to be
10 classified as important to safety, we believe that
11 while that might be a useful way to try to approach this
12 situation, it certainly is an approach that would take
13 some time to develop and reach a consistent basis for everyone
14 to be operating in the same vein. However, we have some
15 concerns about even that because, again, let me reiterate
16 that the way we evaluate nonsafety-related equipment for its
17 safety significance really covers everything in the plant
18 and some things we will decide, no significance and therefore
19 they get certain level of treatment, but other items
20 require some upgraded criteria because they have some
21 relationship to it.

22 I'm not sure that the approach that you outline
23 would cover all of those contingencies. We believe that
24 the way we and the industry have been doing it by looking
25 at everything, that we've been -- we've been picking up

1 the things necessary that have a safety significance.

2 Let me give you one example that probably would not
3 get picked up in the approach you outlined.

4 It just comes to mind that we've had to --

5 Q Excuse me, Mr. Museler. I didn't outline an
6 approach. I'm just seeking information.

7 A. (WITNESS MUSELER) I'm sorry, sir, but let's see if
8 we proceeded that way to make such a list based on the --
9 all of the documents available we, for example, put
10 seismic supports on some domestic water and the outlines
11 for -- from the modes in the -- under the control room.

12 Certainly as a system, that system would
13 never be referenced in any of the guidance documents that
14 we've got. It might be alluded to in some other
15 criteria, but that came out of looking at all of the
16 specific components there and deciding that because
17 there was a penetration in the control room floor, that we
18 ought to apply enhanced design criteria and inspection
19 criteria to the supports, which,
20 on a system which on a sanitary system that normally
21 wouldn't be, you know, certainly wouldn't be thought of in
22 that light.

23 With regard to reporting requirements in the
24 future, we believe that the way we and the industry have
25 approached this in Part 50.55(e) and Part 21 in the future

1 that we include in our evaluation, systems and equipment
2 that could have an adverse effect on safety, whether
3 or not they are safety-related or nonsafety-related.
4 If the requirements to part 21 apply, we would report
5 it, and so that we don't think that a vague definition
6 to us, and we would add anything to that. We believe
7 that the regulations require us to report failures or
8 conditions in the plant which could have a safety
9 significance.

10 We don't think that the imposition of that
11 definition would change that at all. We do that.
12 But we are very concerned as to what it would mean to
13 impose a term that does not have a definition because
14 individual reviewers or individual I&E inspectors would
15 then, in our judgment, have their own view of what that
16 meant.

17 We think that would lead to a lot of
18 unproductive dialogue back and forth as to what is important to
19 safety and what criteria gets applied to important to
20 safety. Right now, our nonsafety equipment, the
21 Staff, I believe, has agreed that the appropriate graded
22 quality assurance requirements and design requirements
23 we've applied to that equipment, is adequate.

24 I believe they are in concurrence with us on
25 that. But that's not to say if a vaguely defined term,

1 such as important to safety, were imposed on the industry,
2 that the individual human beings in the regulatory
3 process would not latch upon that to apply their own
4 definition absent any regulatory definition for it. That
5 gives us grave concern.

6 We think that would be very unproductive and not
7 in the interest of safety at all.

8 A. (WITNESS POLLOCK) Judge Morris, can I -- and
9 Bill has covered detailing in the technical end as I said
10 he would. Can I cover if I can and I think you're exploring
11 with me, if I'm correct, what is philosophy and --
12 what is the company's philosophy and approach to it.

13 If I understand your question correctly,
14 if in the current definition there were some limits defined,
15 a list could be established; we would have no problems
16 with that list.

17 I have no problems at all with that list in
18 establishing and implementing a program to go to work and
19 cover the items identified. I as an operating
20 individual, with about 30 years of operating background
21 behind me, have difficulty saying that I want to
22 cut off any such list because someone has looked at it
23 and said "by our current definition, here is a list of
24 what we should have."

25 I'll go to work and look at anodes in a
condenser water box and say to you, "How do you analyze

1 their importance to safety? They can corrode off
2 and we can go to work and have corrosion on condenser inlet
3 tubes and we can have condenser tube failures and you
4 shut the unit down.

5 Significance of safety is very, very little.
6 However, within our program as we look at that, we look at
7 what is the impact of that, it means that condenser failures
8 is contamination of the condensate system. Do
9 demineralizer handle it, don't handle it. If the
10 demineralizer fails we could have intrusion or breakthrough.
11 If we get a shutdown indication due to main breakers
12 on the main generator open or don't open. Does the main
13 stop valves open. I'm getting off in detail.

14 My concern is I think that the application that
15 we are making to evaluation of every piece of equipment in
16 that plant is a more appropriate way to approach it
17 right now, and I have difficulties with the definitions
18 saying to me if they were defined and a list was
19 prepared, that would not stop our program from continuing
20 to look, and I don't think it would be a definitive
21 program.

22

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BY JUDGE MORRIS:

1 Q I believe you said this morning, Mr. Pollock,
2 that you had no quarrel with the quality of safety with the
3 Staff.

4 A (WITNESS POLLOCK) Positively none.

5 Q I believe there have been some allegations,
6 perhaps that the attitude towards safety of LILCO
7 is different than the Staff's, and this is based on
8 nonacceptance of the Denton criterion.

9 Do you see any explanation for that kind of
10 difference of view?

11 A (WITNESS POLLOCK) I do, Judge Morris,
12 firmly feel that we are dealing with an interpretation of
13 the words. I have never, and we've committed and I had
14 agreements and discussions with Staff as to the philosophy
15 of equipment other than safety-related, specifically
16 categorized in technical specs or FSAR levels of
17 importance and have committed to the Staff and said
18 that our programs as you've accepted in the program are
19 adequate, and we will continue those programs.

20 There is a continual emphasis to me to accept
21 the wording, and I guess if there is a difference of
22 opinion, it is one of my position has to be the wording
23 continues to me to be ill-defined, wide open, and
24 vague. And it is a legal matter of if that interpretation
25 is to be applied appropriately to regulations, then pursue,

1 and when it is defined, obviously, we and the industry
2 will abide by it.

3 But they are asking me to make that interpretation
4 of the wording. I don't know how to do it. It's open-
5 ended and it goes on, and I can't put a limit on that.

6 If that's uncooperative, it's a difficult
7 situation. There are certainly very firm opinions
8 from my point of view as to the meaning of the word.
9 I do feel very strongly that we have submitted a
10 program, and it has been accepted by the Staff. Now,
11 it's a question of how is that wording to be handled,
12 and gotten into a regulatory sense that all of us can
13 deal with.

14 Q There has also been some discussion while the
15 plant has been constructed and designed to be
16 at least equivalent to the Staff's requirements, including
17 their concept of important to safety, that things might
18 happen in the future during operation where equivalent
19 of the quality of standards that reflect design and
20 construction are not as prominent as they are during
21 that stage.

22 An example was given, which you may have heard
23 about in yesterday's testimony, of the maintenance engineer
24 who was awakened at 2:00 in the morning, and he's only
25 20 years old, and this happens 21 years from now, and he

1 doesn't know what's in your mind today about the safety --
2 the philosophy of reactor safety.

3 This, I think, is related to the Staff
4 position that without a common acceptance of the
5 agreement -- acceptance of the definitions of terms that
6 this situation could lead to a less safe condition in the
7 future.

8 Would you comment on that, please?

9 JUDGE BRENNER: Off the record.

10 (Discussion off the record)

11 WITNESS POLLOCK: Judge Morris, if I
12 understand your question correctly, my response to you would
13 be one that it's not a matter of name or terminology that's
14 applied to various pieces of equipment or systems that
15 we have in the plant. We have established programs
16 reviewed with Staff and accepted in the construction and
17 initial stages of the plant.

18 My commitment is one of maintaining that same
19 level of integrity of safety of the facility through
20 the various programs that we have in place, and those
21 programs have been presented and reviewed with the Staff
22 exactly how we will implement the existing assurance of
23 safety, assurance of design, assurance of testing as we
24 swing over into the operational phase.

25 I guess I still come back to my earlier

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1 statement, which I think you are posing to me, use of the
2 words is giving me difficulty as a responsible person
3 in this organization, to audit against those words.
4 That's why we work with the Staff to say "Does this say
5 the same thing philosophically of what you're trying to
6 accomplish?"

7 So it's a --

8 WITNESS RIVELLO: I just would like to interject
9 relative to the 20-year old maintenance engineer. He's
10 an individual who hopefully would be qualified to be a
11 maintenance engineer holding the position, but I do
12 want to reaffirm Mr. Pollock's point that he is
13 working within very many program controls. A part he might
14 utilize or be authorized for use is purchased in
15 accordance with original specs equal to or better than.

16 It is storage requirements of the
17 maintenance over whatever time frame we've owned it. If
18 they choose to use the part, issued properly, procedures
19 which are used to install the part are preapproved
20 by either plant management or the plant review operations
21 committee, so it is a -- it tends to be a people-proof type
22 operation.

23 WITNESS MC CAFFREY: Judge Morris, the concern was about
24 the person that comes along in the future, and that's
25

1 exactly the issue that was raised with the company at
 2 the meeting with the Staff on the 18th of February.
 3 As I recall Dr. Mattson asked that same question. My
 4 understanding of the meeting was, LILCO had come down
 5 and presented its programs, which were documented, they
 6 were documentable programs. His concern was whether
 7 the philosophies and the sensitivities he heard that
 8 day would be carried forth at all times such as people
 9 that -- from the people that presented these programs
 10 were sure they complied with that intent.

11 That was the sole purpose, I believe, of
 12 requesting that those commitments be put in the FSAR,
 13 and other appropriate documents, so that a philosophy
 14 and sensitivity would be sustained in those programs.
 15 And that's what the company has done, and is doing.

16 BY JUDGE MORRIS:

17 Q Is it your position that the program is
 18 well enough defined so that someone coming in cold from
 19 the outside could understand it, and with some knowledgeable
 20 effort determine whether or not there was compliance with
 21 that program?

22 A (WITNESS POLLOCK) Yes, sir, it is, and the
 23 commitments to the FSAR that we are adding to our
 24 FSAR are committing to flag that all programs will
 25 continue to be appropriately defined.

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1 A (WITNESS MC CAFFREY) Judge Morris, as part of
2 the Company's indoctrination programs for new
3 employees or people changing positions, there are records
4 maintained that assure people familiarize themselves
5 with and supervisor signs off on their cognizance with
6 the appropriate documents that govern the nuclear
7 program, like the FSAR, 10 CFR, various charters
8 and programs, I believe, that enhances the assurance
9 that that would happen.

10 Q Well, just to be a bit more specific, you do
11 have a quality assurance manual that relates to what you
12 define, safety-related, which you also define as
13 equivalent to importance to safety; is that correct?

14 A (WITNESS POLLOCK) Yes, sir, we do.

15 Q And does that cover -- well, let me put it
16 differently. As Mr. Dawe did that, there are nonsafety-
17 related items which do have safety significance. How is
18 it determined what level of quality assurance is applied
19 to those items?

20 A (WITNESS MUSELER) Judge Morris, the formal
21 Appendix B quality assurance program covers the safety-
22 related components, and there are other programs
23 which address quality that are also documented, and
24 they cover what we did in the past. And the commitment
25 that we have made to the Commission really confirms what

1 we had always intended to do, which was to maintain
2 those documented programs in a design area, in the
3 instruction area, and very importantly, in the preventive
4 maintenance area, the -- and the plant operations.
5 All of those programs are documented. Some of them
6 are the same program, the preventive maintenance of the
7 plant covered safety-related, and nonsafety-related
8 equipment, and the judgment as to what level of
9 surveillance or maintenance to give to equipment is
10 based on the importance of that piece of equipment
11 to the plant as a whole, to its operation, and to its
12 safety significance. So that they -- those programs cover
13 both safety-related and nonsafety-related equipment. I
14 think it is the evaluation of the items on individual
15 and system basis as they are placed into these programs
16 that assures that the appropriate level of quality is
17 maintained in the future, whether you call it an Appendix B
18 Quality or a quality assurance in lower case letters.

19 We believe our programs do that. The fact
20 that we have a formal Appendix B program is
21 just a result of the way the regulations, I believe,
22 require us to handle it, but all our programs address the
23 appropriate quality assurance requirements in the generic
24 sense that are required on an individual component and
25 system basis.

1 Q Mr. Museler, is it your opinion that limiting
2 ourselves to the class safety-related for the moment,
3 that for each structure, system and component that is
4 safety-related, that each of the 18 criteria of Appendix B
5 must be applied?

6 A (WITNESS MUSELER) No, it is not.

7 Q Why not?

8 A (WITNESS MUSELER) Simply because some of
9 those criteria just don't apply to an individual component
10 or a system or activity. If one went down the 18 criteria,
11 one can find examples where other criteria just are
12 not applicable to that particular process or component.

13 Q Is it also true that some criteria would be
14 applied partially, depending on some other factor?

15 A (WITNESS MUSELER) Yes, sir, that is true.
16 Each situation has to be addressed individually and
17 the appropriate level of -- or the appropriate quality
18 assurance criteria, as well as the appropriate level
19 of application of that criteria has to be judged on an
20 individual basis, which I think affirms --

21 Q Let me interrupt again.

22 Now, if you expand your horizon
23 to the class of nonsafety-related but with safety
24 significance, would you do anything different in quality
25 assurance programs?

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1 A (WITNESS MUSELER) The difference would be in
2 degree, Judge Morris, and the significance of the individual
3 system or component. Certainly, some of the attributes
4 of the Appendix B criteria are applicable to nonsafety-
5 related equipment, and its safety significance, and its
6 functional significance. Others are not, and the level
7 of quality assurance is also something that would
8 be decided on an individual basis.

9 Q So you'd go through the same thought processes?

10 A (WITNESS MUSELER) Yes, sir. I think Mr. Rivello
11 has something to add to that.

12 A (WITNESS RIVELLO) Well said.

13 Q Thank you, gentlemen. That's all I have
14 for the moment.

15 BY JUDGE BRENNER:

16 Q Let me start out by saying that some things
17 in this area are so general that I may either repeat
18 in my questions using different words some ground
19 that Judge Morris covered, or you may end up saying
20 you have to repeat your answers, even though I didn't
21 perceive that would be the case from my question.

22 Also, having had painful law school memories,
23 I hate to start out in the case of lives not
24 in being 20 years or 21 years old, but in looking at
25 this future concern that Dr. Mattson expressed to us on

1 the record yesterday, how does LILCO from its perspective
2 see this concern ameliorated by an adoption of the
3 Denton definition as the Staff would have you do?

4 A (WITNESS POLLOCK) No, sir, I do not.

5 Q Do you agree or disagree that the NRC has juris-
6 diction to impose regulatory requirements for items that do
7 not fall within the definitional class of safety-related as
8 defined by Appendix A to Part 100?

9 A (WITNESS DAWE) I think we agree that they have
10 regulatory jurisdictions over many of the nonsafety-related
11 items that do not fall into the class of safety-related, in a
12 number of ways. I think we address that in our opinion on
13 this contention. Performance requirements that are stated for
14 the safety-related items are in the regulations; we address
15 those performance requirements. We haven't completed those
16 performance requirements unless those items that are designed
17 for those performance requirements are also protected from
18 anything nonsafety-related.

19 If we had a nonsafety-related component that caused us
20 not to comply with one of those performance requirements,
21 we would have violated that regulation.

22 That is our design basis. There are consequently
23 requirements throughout the regulations.

24 Part 20 talks about not undue risk to the health and
25 safety of the public, but it talks about benefit to the

1 health and safety to the public.

2 Those are the normal release limits. We certainly have
3 to comply with Part 20. We've conformed with Part 20 and
4 designed a plant that will allow LILCO to conform to the
5 requirements which will not allow noncompliance with that
6 regulation.

7 Certainly, they are covered by that regulation of
8 10CFR Part 50 which are achievable. We have complied with
9 those regulations during construction and LILCO will be
10 able to comply during operations and that compliance is
11 predicated on proper operation and design of nonsafety-
12 related. We have no disagreement with that.

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1 Q Do you agree or disagree that all systems,
2 structures and components in the plant, even those
3 outside the category defined by the term "safety-related,"
4 should be designed, fabricated, or erected and
5 tested and treated in the future with quality standards
6 commensurate with the importance of the safety functions to
7 be performed?

8 A. (WITNESS DAWE) Judge Brenner, I don't
9 recall exactly how you phrased the question. We
10 certainly agree that in the future as in the past,
11 all structures, systems and components in the plant and
12 all activities affecting those structures, systems and
13 components for construction, testing, fabrication,
14 operation, should be done with appropriate quality
15 standards and appropriate checks to make sure that
16 those quality standards are applied.

17 I recognized where it came from, obviously. We
18 are getting down to a legal argument as to how far that
19 goes as a regulatory requirement as opposed to how far
20 it goes as conventional quality assurance and good
21 engineering and operations practice, I think, that in large
22 part is the legal issue that we confront in philosophy
23 and in concept, as the engineering end of this project,
24 we certainly don't disagree with that and I'm sure the
25 operations end doesn't disagree with that.

1 It's the legal question of what the term means.
2 We believe that legal definition is changing on us. I
3 think in substance everybody agrees with that philosophy.
4 We've had a lot of testimony, a lot of information
5 around as to what that quality assurance program is or should
6 be and what the quality standards are and should be. I
7 think we have good mutual understandings on that.

8 But, you know, I can only answer your question
9 directly that we agree you have to do those things for
10 everything in the plant. The "have-to" is not
11 a regulatory requirement for everything in the plant,
12 but it is not only the regulations that make these plants
13 safe; it's the people who design them and build them and
14 operate them that make them safe, as well.

15 Q. Do you agree that it is a regulatory requirement
16 unless you have specifically obtained through the proper
17 procedures a variance from it to assure that the
18 Shoreham plant is consistent with all the implementing
19 guidance of the Staff's standard review plan and the
20 standards and criteria referenced in that?

21 A. (WITNESS DAWE) Could we have that question read
22 again?

23 Q. Let me rephrase it because I think I can get
24 more directly where I want to go and I don't want to hang
25 you up on legal interpretations.

1 Has LILCO accomplished everything to date with
2 respect to design, construction, fabrication, testing of
3 the Shoreman plant in accordance with the Staff's
4 criteria and guidance in its standard review plan
5 except in instances where LILCO may have called out
6 particular differences from those standards to the Staff and
7 resolved them with the Staff?

8 A. (WITNESS DAWE) Judge Brenner, to my knowledge, in
9 the licensing process, we have neither been required to
10 nor have in one place identified every place from the
11 SRP that may pivot on the Shoreham plant. However --

12 Q. I wasn't asking that.

13 A. But that's very close to what you asked and I need
14 to put it in one place.

15 Q. I didn't say in one place.

16 A. (WITNESS DAWE) We have developed 16 volumes of
17 a final safety analysis report that is chock full of details.
18 We have addressed the things required to be addressed
19 for the Staff's purpose in the standard review plan, and in
20 the standard format. We have had many technical meetings
21 with the NRC over the years of construction and design of
22 this plan. We have developed and delivered to them
23 at their request many detailed engineering designs and
24 construction-related documents. And they have, to our
25 knowledge, referred us to the Standard Review Plan.

1 That's easily confirmed when you look at the
2 questionsthat you get and you find them right out of the
3 standard review plan. It doesn't surprise me you do that
4 because they refer to that document. We have to our
5 knowledge resolved any and all differences that we may have
6 had between Staff and ourselves as to what the standard
7 review plan, NUREGs, Reg Guides or other guidance documents
8 led the Staff to believe were the ways to meet their
9 regulations. So I think the closest answer is, yes,
10 we have complied with their guidance documents, and all
11 differences, if they existed, have been resolved between
12 us and the Staff.

13 A. (WITNESS MC CAFFREY) Judge Brenner, I think I
14 speak for three of us at this table who have been involved
15 in the licensing of this plant for a long time. I go
16 back to about 1975, and in the time from then until
17 now I donot recall any instance where in the course
18 of the Staff review of this docket we ever came
19 to any disagreement on interpretation of words like
20 "important to safety." It never came up. It was
21 safety-related and it was nonsafety-related; so it was
22 never any interpretation of any different view on what
23 those words mean.

24 Now, the first time that there was a
25 differing interpretation of what those words meant was in this

1 proceeding last spring when this issue came up. We
2 certainly heard the term "important to safety" but we
3 never in any discussions with the Staff meant anything
4 different than safety-related.

5 A. (WITNESS DAWE) I might add specifically the term
6 "important to safety but not safety related" has just
7 become a term of art in this hearing.

8 I've been a licensing engineer for ten years,
9 and I have never heard that term until this hearing, and
10 I have never read that term in any Commission regulation
11 or guidance document, nor in any other of our internal
12 documents or our submittals on any client's job to the
13 NRC.

14 A. (WITNESS MUSELER) Judge Brenner, I've been
15 involved in Shoreham since 1973 and since that time also
16 involved in at least two other licensing proceedings and
17 nuclear power plants. And I, too, have always seen the
18 term "safety-related" and "important to safety" used
19 simultaneously and have never until this proceeding been
20 in discussions with Staff reviewers and I've had many, many
21 discussions with many, many Staff reviewers over the last
22 ten years, and have never heard the nonsafety-related but
23 important to safety until now.

24 Q. Your concern, as I understand it, is the vagueness
25 of the definition of the term "important to safety" in the

1 Denton memorandum and your not knowing what it
2 might mean for the future; is that correct?

3 A. (MR. POLLOCK) Judge Brenner, as you said, that
4 is repeating my answer, but I will reaffirm that. That posi-
5 tively is my concern and the reason for my meeting with
6 senior staff personnel as I did to try to define how
7 that should be interpreted to something that we can govern
8 our operating organization against.

9 Q. Yet, where the commission through its appropriate
10 delegates, which in some circumstances might be the
11 Staff, has particularized the requirements, you are not
12 asserting, are you, that LILCO does not have an obligation
13 to either meet those requirements or follow the proper
14 procedures to obtain variances from those requirements
15 on the basis that they are not being applied to systems,
16 structures or components that are safety-related within
17 the Appendix A to Part 100 definition?

18 A. (WITNESS MUSELER) Judge Brenner, excuse me. Could
19 you please rephrase that question?

20 Q. I'll get it reread in a moment and tell you
21 what the intent of my question is just before I have it
22 reread.

23 I'm trying to hypothesize away the vagueness
24 problem so the assumption is that you are going to get
25 a particular requirement; however, it is being applied to

1 a system, structure or component that is not a safety-
2 related one.

3 (The reporter read the record as requested.)

4 A. (WITNESS DAWE) Judge Brenner, we may have to ask
5 the question one more time and we may like to have it read
6 one more time. Could we ask a question? And that is when
7 you state requirements, do you mean regulations or do you
8 mean Staff practices such as a regulatory guide or a
9 standard review plan acceptance criteria?

10 Q. I was including everything, including
11 regulatory guides and things of that nature. But my
12 assumption, the assumption that I asked you to make,
13 that the requirement is specific enough so that you
14 understand what is being asked as directed to a particular
15 system, structure or component. I want to solve your
16 vagueness problem and to put it bluntly, and phrase
17 it differently, would you then tell the Staff, "Well, don't
18 bother us because it is not safety-related as
19 distinguished from either following a requirement or going
20 through a counteranalysis as to why the Staff's
21 concern with respect to the system, structure or component
22 is not valid or is not being met"? That is technical
23 analysis type approach as distinguished from saying, "You
24 can't play in this ball park" to the Staff.

25 A. (WITNESS DAWE) I don't think we or LILCO has
ever said "you can't play in this ball park." The fact

1 that it is nonsafety-related doesn't allow us to just
2 disregard any communications we have with or from the
3 Staff.

4 When you look at a regulatory guide or standard
5 review plan or a NUREG document or any other method
6 that the Staff has of communicating with the industry
7 what it feels is appropriate and correct, we take a
8 great deal of notice of those documents.

9 Now, we aren't obligated to do it exactly that
10 way. As has been said many times in this proceeding, and
11 many other places, if we agree with them that that's a good
12 way to do it for our particular application, and that is the
13 right thing to do, then it is obviously much easier for us to
14 do it that way because it removes much of the dialogue
15 that has to go on to convince the NRC that we are meeting
16 their regulations or their requirements.

17 But certainly with those types of documents, we
18 can propose alternatives and we have done that in the
19 past and will continue to do that in the future, but when
20 we propose an alternative, we have the burden to show them
21 that that alternative is in fact an equivalent or a
22 better alternative, but we've never walked away from any
23 regulatory guide or NUREG document or other guidance
24 document trying to use the reasoning that we call it
25 nonsafety-related, so it's not fair game to talk about it.

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A. (WITNESS MUSELER) The same kinds of discussions go on, Judge Brenner, with regard to the application of the SRP and regulatory guides on safety-related equipment, since those are guidance documents, and not regulations. We are permitted to propose alternate means of accomplishing the same level of safety that the Staff intended with the regulatory guides themselves, and we have in the past specifically discussed with the Staff and done things that they thought were appropriate on nonsafety-related equipment that were covered by certain regulatory guides.

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1 One that comes to mind is the way seismic
2 supports are designed and installed on nonsafety-related
3 systems.

4 We've had lengthy discussions with the Staff on
5 that. We believe we've satisfied them that we do
6 meet the intent of the Regulatory Guides that are
7 appropriate to that, and Mr. Rivello has some additional
8 examples of nonsafety-related equipment where the Staff
9 has asked us to do certain things, and where we have
10 worked with them and accomplished the intent of
11 what they thought was appropriate.

12 A (WITNESS RIVELLO) I just want to offer as some
13 examples, some technical specifications, surveillance
14 requirements that we have. It is known scope, and we did
15 not in any way object to the fact that it addressed
16 nonsafety-related equipment, and what some examples are
17 is a surveillance program of the chloride intrusion
18 monitors, turbine overspeed protection, diesel
19 and motor-driven pumps.

20 That's three of a sampling of a dozen type
21 tests.

22 Q All right. We've had a lot of examples
23 on the record, now. Did you want to go into detail on
24 new ones?

25 Let me just say, I'll turn to you in a moment,

1 Mr. Pollock -- let me just say, Mr. Museler, I
2 think everybody familiar with this record understands
3 the process that takes place with respect to Staff
4 Regulatory Guidance in the safety-related area, and I
5 didn't mean my question to imply that I didn't realize
6 that. I was asking whether that's the same process
7 that would take place regardless of whether the
8 system, structure or component was safety-related as
9 distinguished from an approach that you would be in an
10 area where you and the Staff shouldn't even be involved,
11 and I think you've provided that answer, also.

12 Mr. Pollock, I didn't mean to cut you
13 off.

14 A (WITNESS POLLOCK) No, not at all, Judge Brenner,
15 I guess I was trying to get back to what I understood
16 to be the heart of your question without the detail.

17 It seemed to express concern to me that
18 we as an Applicant for a license are saying the
19 regulatory process states that and you, Staff, have no
20 foothold in any other place.

21 I would like to re-emphasize, if you will, our
22 total program that we presented to the Staff was one
23 of a graded type of safety approach relative to the safety
24 significance of it. Examples expressed here are past
25 practice where we have entertained the Staff's concern.

1 But I'm a little bit shaky now on what the legal process
2 is, and I guess I have to say to you, as far as a
3 direct challenge, and confrontation, then there is the
4 regulations that we are required to abide by, and then
5 there is a feel of making this plant operate and operate
6 safely.

7 We've got Staff on board, they will be there;
8 we are participating with them now, and we would expect
9 them to be looking into areas other than those covered by
10 regulations. And that was part of my commitment in one
11 of our meetings with the Staff, also, that they are not to
12 be shut off.

13 We will consider any of their inquiries and
14 looks.

15 MR. ELLIS: Judge Brenner, may I have the Board's
16 views on whether we are going to take another break
17 at all.

18 JUDGE BRENNER: Yes, let me see if I finish
19 up my questions in just a few minutes, and we'll take
20 another break.

21 Do you want to take one now?

22 MR. ELLIS: I think if we are going to go
23 to 1:00, now would be a good time.

24 JUDGE BRENNER: Give me five more minutes, and
25 we'll take a break. Judge Morris will hold me to it.

1 BY JUDGE BRENNER:

2 Q Gentlemen, the Commission has a requirement in
3 10 CFR, Section 50.49(b)(2) addressed to nonsafety-related
4 equipment, and the rule is the environmental qualification
5 of electric equipment important to safety for nuclear
6 power plants. I may be catching you particular gentlemen
7 cold with it, and if so, that could be your answer, and
8 this would be an appropriate time to take the break.

9 We discussed this rule in the context of
10 a different contention. Perhaps I should read for the
11 record that paragraph (b)(2) states "nonsafety-related
12 electric equipment whose failure under postulated
13 environmental conditions could prevent satisfactory
14 accomplishment of safety functions specified in
15 subparagraphs (i) through (iii) of paragraph (b)(1) of this
16 section by the safety-related equipment."

17 I think you'll see that the reference is
18 rather familiar, very close, if not precisely, the definition
19 of safety-related from Appendix A to Part 100.

20 I take it, putting together testimony, we
21 heard also where that LILCO intends to comply with that portion
22 of that regulation.

23 A (WITNESS DAWE) Yes, we have testimony in the
24 record.

25 Q Do you think that definition is more

1 precise than the Denton definition?

2 Why don't you have the same vagueness problem
3 with respect to accomplishment compliance with that,
4 as compared to the Denton memorandum, or maybe the answer
5 is, you do?

6 A (WITNESS DAWE) Judge Brenner, I'm not the
7 expert who testified for LILCO on the EQ rule, but I am
8 familiar with that testimony, and LILCO and Stone and
9 Webster and GE's activity for this new rule. I firmly
10 believe we will not be confused by what's in that set.

11 I think if there is ultimate confusion, it would
12 be coming to an agreement with the Staff as to what
13 kind of demonstration, it is going to require to convince
14 them that we are right, that (b)(2) for this plant is a
15 known set.

16 Our design philosophy that we told you about
17 during the 7B initial testimony is not to allow that
18 type of interaction where a nonsafety-related
19 component could adversely affect the performance of the
20 safety-related. In fact, if we had one, where a harsh
21 environment could do that, then a random failure of
22 that component would do the same thing, or perhaps its
23 failure in seismic event would do the same thing.

24 My inclination personally, if I found one of
25 those, would be a change in the design to preclude the

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1 problem rather than protecting it for an environment without
2 considering a seismic event or a random failure of that
3 component, or other things. I think we heard testimony
4 as to why that was put into the regulation, and that it was
5 put in primarily for consideration of older plants where
6 the classification schemes were not as well understood as
7 they are today.

8 This is a much newer plant than the SEP plant,
9 for example. It may not be much newer than the day it
10 started, but it has been updated and moved along quite
11 extensively.

12 We have done a lot to show the Staff that we don't
13 have adverse interaction.

14 JUDGE CARPENTER: Mr. Dawe -- I don't mean to
15 interrupt you. I don't think Judge Brenner went in that
16 direction. Let me state the very primitive level or the
17 essential level of this rule.

18 I think the question is going in the direction of
19 comparing the construction of this rule with the logic of
20 this rule, and your comfortability with it, vis-a-vis your
21 uncomfotability with the Denton memorandum, trying to use
22 this example to get a spotlight on what the problem is.

23 MS. LETSCHE: Excuse me, if I might, for one
24 second. I couldn't get in before you started, Judge
25 Carpenter.

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Judge Brenner, I would like to move to strike the long portion of Mr. Dawe's answer that was not in response to your question. I believe it related to a contention on which the record has been closed.

JUDGE BRENNER: I would like to know better exactly what he said before I grant a broad motion to strike. Maybe we can solve it this way. We won't base any findings of the environmental qualifications contention on what we just said in this last answer.

MS. LETSCHE: That solves my problem. Thank you.

JUDGE BRENNER: That doesn't mean if things he said might not be pertinent to this inquiry.

MS. LETSCHE: I understand that.

JUDGE BRENNER: Let's take the break, and this will give you an opportunity to look at this rule, and we do not intend to go through this rule because of the environmental qualification area, as you know.

Let's come back at 12:05.

(A brief recess was taken at 11:50 a.m. and reconvened at 12:05 p.m.)

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JUDGE BRENNER: We are addressing the environmental qualification question, and Judge Carpenter can pursue it now with some particular questions in line of the general area we asked you to think about.

We should note the environmental qualification record certainly notes that it is a relatively new regulation. I forget the precise effective date and publication date.

The only reason I note that in the context of some of the comments as to the past history of involvement with the Staff and so on.

BY JUDGE CARPENTER:

Q Mr. Pollock, I wonder if you could help me develop some perspective by using this particular environmental qualification statement to see very clearly what the problem is with the Denton memorandum. That's the direction I would like to go just for that extent, the logic, if you will.

Item B says "electric equipment important to safety." It uses the words that we've heard so frequently. And then under that electric are three categories, one of which is safety-related. Clearly that usage denies on this occasion that important to safety and safety-related are synonymous or any thinking of it in terms of formal logic are identical. That is what I took

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1 the memorandum to say.

2 You are taking it to say something else and I
3 thought maybe with this example you could show me what it is
4 you are taking it to say other than "Staff" -- as I
5 read the memo, it says "Staff has used these words
6 interchangeably without ever declaring them to be
7 identical, but has" -- notice this usage and testimony in
8 this hearing says that has also occurred with LILCO and
9 others.

10 I'm trying to see, the memo says, "well, let's don't
11 do that any more." That's what I'm trying to start from.

12 Downstream I see this manifestation of it.
13 I'm trying to see what problems it causes you.

14 A. (WITNESS POLLOCK) Judge Carpenter, I'm going
15 to ask George Dawe to answer an initial reply to you,
16 if I may, because of the regulatory aspect of it. And then
17 I do have a thought I would like to convey if I may right
18 after that.

19 A. (WITNESS DAWE) Judge Carpenter, this is as Judge
20 Brenner mentioned, a very new regulation, and this is the
21 first instance of this differentiation that you just
22 alluded to, to my knowledge, in the regulations.
23 The rule came as a result of rule-making and in fact it is
24 a little different from what was proposed at the
25 beginning of rule-making, and I think represented a fairly

1 substantive change at the end of the rule-making process.
2 But to the extent that it is used here, this is a
3 fairly clear construction of what is meant in this
4 specific instance for this specific situation of what
5 is meant by important to safety.

6 Whether that would be the same meaning every place
7 else, I don't know. But the first part of this is clearly
8 the safety-related set, and in this instance to bring
9 nonsafety-related into the terms important to safety is for
10 the specific purpose of saying "could prevent the performance
11 of the safety functions specified above," which are the
12 safety-related functions.

13 I think if anything this reflects the newness
14 and the difference and this may be the direction it will go.
15 We can comply with this regulation because it says what it
16 means. We know what it takes to comply with this
17 regulation. It has a functional criteria for this
18 specific purpose.

19 A. (WITNESS MUSELER) In fact, Judge Carpenter, we
20 comply with this regulation now because of the way we
21 approached the design of the plant in the first
22 place, the safety--

23 Q. I ask you what problems you have with this?

24 A. (WITNESS MUSELER) With this particular
25 regulation?

1 Q I know there are lots of things; I listened to
2 testimony for days on this particular subject. I'm
3 conversant with LILCO's program, posture, progress, et
4 cetera.

5 I'm using this specific example just to see,
6 as a specific case, what the problem is.

7 A (WITNESS POLLOCK) Judge Carpenter, with my
8 rather recent familiarity with this being a new regulation,
9 I guess I would have to say to you that the
10 implementation of it and how you go to work and do it is not
11 totally defined to me. I don't have any problem with the
12 regulation written. My direct answer to you--you did ask me--
13 also, how do I then interface that with the definition in the
14 Denton memorandum that I am having problems with, and I
15 won't read it because it's in the record, other than to say
16 it is very vague and open-ended, and not as defined as
17 this, and we say let's get this down to a definition of a
18 similar nature that we can be governed by.

19 We are doing this. We are in our programs
20 fully in our judgment implementing the intent of
21 the Denton definition and what I seem to be into
22 with my people and this posture is accept the words that
23 are in the Denton definition.

24 You've asked me that question, why am I having
25 problems with the words. This, to me, is a great deal more

1 explicit. It has to be analyzed. We haven't analyzed it.
2 Can it be implemented? It certainly is. It is bounding
3 to a specific area and it can be implemented in the
4 procedures implemented.

5 And it seems to me that it is taking the intent
6 of the Denton memorandum and doing just that. I've said
7 let's do that in all of the areas, but don't ask me as an
8 applicant to try to take a broad scope definition and
9 develop those implementing procedures.

10 I then come back and said the intent of it is,
11 our programs are good; they are addressing it; we've got
12 graded safety; that will be continued into the
13 operating plant and we are addressing the intent of it.

14 So I've been asked to accept the words in the
15 Denton definition. I'm having difficulty with that. There
16 are differences, to me, as I perceive them, in the
17 generalities of the words, and the open-endedness in
18 Dr. Denton's verbiage than there is in here. Take
19 that verbiage, and do what has been done here via the
20 regulatory process, better define key areas
21 that we are talking about, and then like any regulation,
22 we have something that we will be bounded by.

23 I don't see the bounds on this. I can't
24 interpret it that way.

25 A. (WITNESS MC CAFFREY) Judge Carpenter, if I could add

1 to what Mr. Pollock has said, if eventually we were led
2 down the path of providing discrete criteria and an approach
3 how to implement this rule and apply to the Denton
4 memorandum that will be nice in the future. But in the
5 Shoreham case, we are absolutely convinced we have
6 a safe plant. We have complied with the spirit of the
7 Denton memorandum and we don't know of any functional
8 deficiencies with regard to the programs we have in place.

9 Q The memorandum didn't say you did, sir.
10 Let me come back to this in a minute. Let me get the
11 thought a little differently.

12 Mr. Pollock, Mr. Museler used the term
13 "safety significant," which he seemed to be quite
14 comfortable with. Are you equally comfortable with
15 that term?

16 These are items that are not defined as
17 safety-related, but in some way have a safety
18 significance, and he was comfortable with the term
19 "safety significance," as a jargon.

20 A (WITNESS POLLOCK) Yes, sir, I'm comfortable with
21 the term "safety significance," and we accord in the
22 programs that we have the appropriate safety significance
23 to the function of the equipment within the plant, so,
24 yes, I am.

25 How do we do that -- excuse me, I won't anticipate.

1 Q I know all the good things. I simply want to
2 know, are you comfortable with the term?

3 A. (WITNESS POLLOCK) Safety significance?

4 Q Yes.

5 A. (WITNESS POLLOCK) Yes, I am.

6 Q I would like to ask, if GDC-1 had the term
7 "safety significant" instead of "important to safety,"
8 in it, would you be comfortable with GDC-1?

9 A. (WITNESS POLLOCK) Judge Carpenter, I won't
10 get into a lot of technical detail on this. I guess
11 what I'm uncomfortable with is the programs that we've
12 developed which we are very satisfied with in approaching
13 the significance of safety within the plant has been well
14 established, well documented and well accepted. I've got
15 a good plant; I've got a safe plant. We're doing what is
16 required in the industry.

17 Now you are asking me if GDC-1 is rewritten to
18 use the terminology of "safety significance," I have to
19 go back and look at it, and say, "well, is that a change
20 to what we are doing now in our programs of acknowledging
21 the significance of the equipment from a safety point of
22 view in the plant?"

23 No. I've got a program in there that is
24 good and we are doing a good job with what we've got in
25 approaching it. If it's a matter of saying, as I read

1 Mr. Denton's memorandum of "let's stop the confusion in-house
2 within the NRC of these varied term usages and get down to
3 a common terminology," then I have no problems with it.
4 If it's a change in interpretation, then I don't know the
5 answer to your question. This does say, then -- and I
6 certainly don't want to bore you with it -- but one of the
7 things that we seem to lose sight of it in Mr. Denton's
8 definition is one of "it's for regulatory guides and for
9 SRPs and let's not make this a new regulatory requirement"
10 type of thing. Let's get our house in order so that
11 everybody understands and approaches it. That's what I'm saying.

12 I concur, let's all talk the same things and
13 we are doing it. We've got a program that demonstrates
14 that and has been acceptable to the Staff throughout
15 the entire effort.

16 You're asking me again a very precise question
17 on verbiage and wording. I would tend to say
18 yes to you if I understood it to mean that what is being
19 done now and the intent of the program is applied by that
20 change in wording.

21 I don't read that in the -- Mr. Denton's
22 memorandum.

23 A. (WITNESS DAWE) Judge Carpenter, if I remember
24 the original question, being if I put the term "safety
25 significance" into the GDC-1, would I still be

1 uncomfortable with GDC?

2 Q. Would you be uncomfortable?

3 A. (WITNESS DAWE) No, sir.

4 Q. Would you feel you would fail to meet it?

5 A. (WITNESS DAWE) No, sir, but if you put the term
6 "safety significance" into GDC-1 and took the language and
7 saw what it said, it would be an accurate description of
8 everything that this Licensee and its contractors has done.
9 If the term "safety significance" had been in the GDC all
10 along and over the years had gotten to get certain
11 interpretations and people started to question those
12 interpretations, we'd have the same problem. It's not
13 the word. It's what's happening to the word. But
14 certainly if you put "safety significance" into GDC-1 and
15 does that describe LILCO's philosophy, I think it does.

16 Q. I'll be the third member of the Board to ask
17 this question.

18 Do you feel, Mr. Pollock, that the Nuclear
19 Regulatory Commission has cognizance that only applies to
20 "safety-related" equipment?

21 A. (WITNESS POLLOCK) No, sir, positively not.

22 Q. What term shall we apply to these other items
23 that have some sort of regulatory authority?

24 A. (WITNESS POLLOCK) Judge Carpenter, I am
25 hesitating only because I don't want to write the

1 regulations. I know they are difficult to write. I do feel
2 this.. The regulations give the Commission the authority
3 they need right now to go to work and address areas
4 other than safety-related relative to the plant.

5 Terminology -- I don't know what terminology
6 to use in there. I would guess I would prefer what we have
7 used in our documentation in the development of our
8 program and the direction to my staff and organization that
9 everything within a nuclear facility, be it balance of
10 plant or the NSSS system, is to be looked at and evaluated
11 on the basis of its significance to the safe operation
12 of the facility.

13 The words "important to safety" have been used
14 in many veins before and always by our interpretation
15 and I think other applicants, have always been interpreted
16 as that safety-related criteria organization. Now we
17 are trying to say how do we get from there to another
18 area.

19 I can't reemphasize enough we are at -- we
20 are beyond that safety-related area with the programs that
21 we have.

22 Q. May I interrupt you? Stay with that
23 thought.

24 I don't think -- I'm not asking questions about
25 what has been done but is strictly focusing on the

1 nomenclature and the words in existing regulations
2 which are trying to be applied just as broadly as you just
3 expressed your comfortability with by appealing to
4 GDC-1's language which happens to be important to safety.

5 Mr.Denton acknowledged that there have
6 been other usages, as I read the memo, and the point is,
7 without fleshing out in detail, I think he is saying let us,
8 because the regulations read that way, reserve the term
9 for the area that we've just been talking about.

10 I may be suffering under a misapprehension;
11 that's why I'm asking the questions.

12 Do you see something that I don't see?

13 A. (WITNESS DAWE) Judge Carpenter, I think what we
14 see and may not have conveyed, particularly when you look
15 to GDC-1, it is very easy and it is our philosophy, that
16 the important to safety set would be the plant and the
17 important to safety but nonsafety-related set would
18 be our nonsafety-related set and we wouldn't want to
19 arbitrarily cut that off on the bottom down there and say
20 something down there is not important to safety.
21 I think the problem is, if you take and look everywhere
22 where the term "important to safety" appears, then it starts
23 to become a variable set. And you have to start talking
24 a whole lot more to figure out what's in the set for
25 the purpose of a specific regulation, where the term

1 is used. That's where the difficulty occurs, and part of
2 the problem in understanding our discomfort, I suppose,
3 is the amount of emphasis that has been placed on GDC-1
4 in this proceeding as the only context of the term important
5 to safety so it would become a variable term.

6 Q That's where I'm having trouble with the proposed
7 amendments to the FSAR as it was written. I think you,
8 in particular, testified with pretty much using the terms
9 interchangeably -- "safety-related," and "important to
10 safety." Now, suddenly, that same document is to be used
11 as guidance with respect to "safety significant", and that
12 is where I am having trouble. Without changing the words
13 in it, the words are going to be used now in a whole new
14 connotation.

15 JUDGE BRENNER: Mr. Dawe, could I follow up on
16 your last answer?

17 Don't you have a variable set in the future under
18 the approach which you say LILCO has anyway if you are applying
19 standards and criteria commensurate with a function?

20 Doesn't the set vary depending on what you are
21 trying to protect for or against and as you learn things in
22 the future that you don't presently know?

23 A (WITNESS DAWE) Judge Brenner, the set is
24 established now by the plant that is there, and what is
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1 applied to that set is established by the records for that
2 plant. Those are records that are retrievable and being
3 maintained for the life of the plant. They were always in
4 place, procedural controls, the documented program that
5 would control procurement and maintenance activities, that
6 would control modifications to the plant, and so forth.
7 Those were always required going back to the basic documents
8 to find out what they were in the first place and why they
9 were that way.

10 I think LILCO's commitment is basically a commitment
11 to memorialize that program that they had, even for the
12 non-safety-related and not remove it.

13 If, in the future, there is a changed regulation
14 or the operating experience of this plant or the feedback
15 experience from other plants indicates that there is a need
16 to look at the design or the way the plant is operated, that
17 will be done and then those decisions will be made accordingly,
18 using the same philosophy that they have used to get to the
19 point that they are at today and they will be documented,
20 they will be documented in plant records; they will be
21 documented in the safety analysis report; they will be
22 reported to the Commission and that becomes the level from
23 which they operate.

24 But there is a baseline right now, and I think --
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1 I'm certain we have agreement with the Staff that that
2 baseline today is correct and appropriate, and in fact in
3 many areas goes beyond Commission regulations.

4 Q But even under your present recognition and
5 approach, that baseline may, in the future, be varied on an
6 ad hoc basis, depending on future circumstances of the
7 type you just indicated, operating experiences, future
8 experience, and plant feedback; wasn't that the case?

9 A (WITNESS MC CAFFREY) Judge Brenner, I think
10 we've described to this Board before and we've certainly
11 described to the Commission the programs that we
12 have that continually are growing in time; they are not
13 static programs. We issued this Board our preventative
14 program, sill and till programs, from the various industries
15 feedbacks. Those get put into the programs that were
16 contained in Mr. Pollock's letters to the Commission.

17 To be sure they were responsive to situations out in
18 the industry as well as in the plant, so we fine-tune our
19 programs and improve them and, if we find, due to some
20 information that comes to you 20 years from now, we need to
21 upgrade surveillance frequency, or modify some approach
22 that will be put into the program, these are living programs.

23 Q That is what I inferred after a large
24 number of readings of the FSAR amendment. How is that

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1 different than saying, you'll do the right things as
2 appropriate? That's my own paraphrase of GDC-1 and
3 you'll do to systems, structures and components that
4 in the future appear appropriate to do it to and that's
5 my loose definition of the Denton definition.

6 A. (WITNESS MC CAFFREY) The program we submitted
7 to the Commission as contained in the FSAR now provides a
8 commitment we can understand and have ease of
9 dealing with and we believe is more workable by I & E
10 when they come in and inspect. When an I&E inspector comes
11 in or two or three inspectors using the two or three
12 Denton definitions as the yardstick and that memo solely
13 with no further criteria or clarification and try
14 to audit to the Denton letter, we don't think
15 that's workable. The commitment we have is a workable
16 commitment. It has programs that are auditable and
17 provide the guidance to the personnel implementing those
18 programs to adhere to this concept and we agree with the
19 Staff on that concept.

20 JUDGE BRENNER: All right. We have no further
21 questions. We'll go to parties to find out
22 whether they have questions and to explore the sequence.

23 On my own, I think it is appropriate that the
24 Staff go next, given the way this evolved, but we'll
25 address that in a minute.

1 What we'll have to go back and put together
2 is to just see if we can better particularize in our
3 minds based on the record what is involved in this
4 difference between and among the parties. Some of the
5 things we've tried to explore is the Staff stating that
6 it is important to them for LILCO to adopt the
7 Denton definitions over and above the LILCO FSAR
8 commitment and we attempted to explore some specifics
9 as to why that was the case. And when we express
10 challenging views by way of questions, as the attorneys
11 know, that should not be taken as our views, but rather just
12 a means of flushing out the views of the witnesses.
13 We in effect challenge the Staff through our questions
14 to tell us what the difference is when we postulated that
15 there may be little or no difference and Staff tell us
16 why it is so important.

17 We went through that exercise.

18 On the other hand, LILCO is concerned
19 that it may be -- there may be an important enough
20 distinction such that LILCO takes the position it does and
21 we attempted to explore what distinction there might
22 be there. Some of our questions were an attempt to
23 distinguish LILCO's understanding and from that
24 acceptance or agreement or lack of agreement by LILCO,
25 with GDC-1, recognizing -- possibly recognizing that

1 there are things that somebody might call with some label,
2 label A, which might be the label important to safety
3 beyond that which is safety-related and explore that in
4 the context of GDC-1.

5 That does not necessarily mean, however, that
6 when we are using the term "important to safety" we
7 automatically mean what Mr. Denton says he means by
8 that term. That is there may have been room somewhere
9 in between LILCO's initial testimony that "important to
10 safety" is the same as "safety-related" and Mr. Denton's
11 definition and it is just very difficult when there are
12 language problems, as well as concept problems and to some
13 extent echo Mr. Conran's comments in that regard. We
14 attempt to be very glib when we give our views on
15 what some of the testimony means.

16 I caution the parties it is going to be
17 very important in putting the findings together, that you
18 be fair and full in your reliance on the findings,
19 because if you take a phrase out of context, like
20 important to safety or safety related, and not
21 have it in the context where it is clear what the
22 witness speaking means by the phrase, we are going to
23 have problems and I can tell you we've had problems
24 with the proposed findings on other aspects of the
25 record that we're already going through on areas where

1 we don't have this problem; so I am very fearful that
2 there are going to be latent and patent ambiguities if
3 counsel is not careful.

4 Also, looking ahead towards findings, if there
5 is legislative history for a statute or a regulation,
6 bearing on the correctness and applicability of the
7 Denton memorandum definitions, of important to safety,
8 taken in the context of GDC-1 or other regulations, we
9 expect the parties to tell us about it, because I don't
10 recall ever seeing anything, for example, this is just an
11 example, in the legislative history -- I don't recall
12 seeing any party presenting anything to us by way of
13 legislative history of GDC-1 saying this is what
14 important to safety means in GDC-1.

15 Now, the legislative history I'm talking about
16 is certainly different than Mr. Denton's discussion in
17 his memorandum. That is not legislative history,
18 obviously, as counsel knows.

19 MR. ELLIS: Judge Brenner, I believe that LILCO
20 addressed the legislative history of Appendix A in its
21 finding and we've always sought to distinguish between the
22 argument over the legal definition of the term as opposed
23 to the philosophical point, which is what I thought was
24 being more explored today, but I think we have addressed
25 that point in our findings.

1 JUDGE BRENNER: Gentlemen, you did address it.
2 I did not want to single out or couple out, as the Staff and
3 County, different parties and given the nature of our
4 reopened record, I don't want the parties to feel that it
5 would be improper to cite other legislative history
6 even though they may have already done so. But to put
7 it more bluntly, I don't recall seeing anything that
8 supports the view that GDC-1, when it used the term
9 "important to safety," meant something like what Mr.
10 Denton said it meant years later in his memorandum, and
11 that's the type of thing I meant. So it would be presumably
12 the parties that disagree with you, Mr. Ellis, would have
13 to come up with that.

14 Of course, as all parties have the obligation
15 for full and fair disclosure before us, presumably LILCO
16 included in its search that which did not support it in the
17 legislative history and if there was anything material,
18 presumably LILCO would have cited that to us, also.
19 But you're correct; you've cited some history to us.

20 Let me inquire what follow-up questions there
21 are. I should start out with the notion that LILCO, as we
22 heard it, certainly hasn't changed their position before
23 us, although we spent a great deal of time given the
24 language problems and other problems to redundantly ascertain what that
25 position might be. And I use the term "redundant"

1 to criticize the three of us, I guess mostly me. Judge
2 Morris went first.

3 Staff, did you have questions?

4 MR. REIS: Yes.

5 JUDGE BRENNER: Can you give us a time estimate?
6 That's not a pressure inquiry; it's merely a mild inquiry.
7 Don't feel pressured by my having asked.

8 MR. REIS: Yes.

9 JUDGE BRENNER: County, can you give me an
10 estimate of time while the Staff is thinking? Do you
11 have questions?

12 MS. LETSCHE: Judge Brenner, our preliminary
13 view, although I might change it after I hear the Staff,
14 is that this testimony doesn't require any cross-examination
15 at this time, although I would like the opportunity to
16 review the transcript, since this was done with, as I
17 noted yesterday, not notice, lack of notice, and nothing
18 in writing for us to look at. I would like an
19 opportunity to review the transcript and indicate if my
20 preliminary view has changed based on that review.

21 MR. ELLIS: Judge Brenner, may I respond to
22 that?

23 JUDGE BRENNER: You always have the opportunity
24 to file a motion, Ms. Letsche. I'm not going to make
25 any ruling now, giving you any permission at this time
which could be indicated as how we might rule on a

1 motion, so, sure, if you see something, file; but if you
2 do file something, it would help your case to point out why
3 it was of a nature that you couldn't be prepared to react
4 today to it.

5 It is correct there was no written testimony,
6 but it always is the case, or often the case that we have
7 a lot of oral examination by the Board or other parties,
8 and parties are expected to pay attention and follow-up.
9 So you'll have to show us something more than follow-up
10 type questioning. That is there was something in there
11 that could not be readily apparent and for which you
12 needed extra preparation time and that type of thing.

13 In other words, if somebody made a motion
14 to comeback for any cross-examination beyond what took
15 place at the time, they'd have to make some showing
16 and you would have essentially to do the same thing.

17 MS. LETSCHE: My point was, Judge Brenner,
18 I might be able to make a final determination
19 quicker than next week if I had a half-hour or
20 an hour or so to consider what has happened here
21 this morning. We heard a lot of testimony, a lot of
22 very long, technical type questions and very
23 long-winded answers, and I'm not being critical.

24 JUDGE BRENNER: They were long-winded questions by
25 us; let's not criticize the witnesses.

1 MS. LETSCHE: What I'm saying, I don't feel
2 that it would be appropriate to require me to say based on
3 all that without having had a chance to not only review the
4 transcript but to review my own notes as to what happened
5 here this morning to make a decision on the spot that I
6 absolutely have no follow-up questions.

7 JUDGE BRENNER: I don't think we're going to have
8 the luxury of waiting. As I say, that situation
9 obtains normally, so start thinking about it right away and
10 we took one break and if after the Staff's questions you
11 come back and say you now know you do have some
12 questions, we'll let you go ahead and ask them. If you
13 want a very short break, we'll consider that, also.

14 Let's see how it goes.

15 You don't have anything presently in your
16 mind, though, that you want to inquire of right now?

17 MS. LETSCHE: I do not right now, but I haven't
18 reviewed my notes for that purpose.

19 MR. ELLIS: That's the same situation that
20 obtains in any cross-examination.

21 JUDGE BRENNER: I said that.

22 MR. ELLIS: Secondly, I object to the
23 characterization of the analysis of the answers.

24 JUDGE BRENNER: I took care of that, too.

25 MR. ELLIS: Thank you.

1 Mr. Reis.

2 MR. REIS: Mr. Chairman, it will be less than an
3 hour.

4 JUDGE BRENNER: LILCO has redirect based on what
5 it has so far?

6 MR. ELLIS: Yes, sir, about ten minutes, maybe
7 five.

8 JUDGE BRENNER: How much less than an hour? You
9 obviously don't want to give us a more definite estimate.

10 MR. REIS: I want to get a little feel.

11 JUDGE BRENNER: It could be an hour?

12 MR. REIS: That's right.

13 JUDGE BRENNER: That's certainly very fair on
14 your part.

15 Give us a moment.

16 (Pause.)

17 JUDGE BRENNER: Given that estimate, Mr. Reis --
18 and you can come back and disagree -- we would propose, then,
19 to break for lunch, but a short lunch break of 45 minutes
20 since I think we are going to run so late that it would
21 be fair to the witnesses and to counsel and
22 to us that will have to have lunch.

23 We won't be able to break soon enough to avoid
24 it and that would also achieve the purpose of giving
25 Ms. Letsche the time, less than precisely what she asked

1 for, but what I would consider reasonable time.

2 MR. REIS: The Staff would not object to it.

3 JUDGE BRENNER: The only reason for not doing
4 so would be if there was a reasonable probability once you
5 got started it would suddenly become 10 minutes
6 rather than an hour, but you don't know that?

7 MR. REIS: I don't think so.

8 JUDGE BRENNER: All right, let's break until 1:30.

9 (Whereupon, at 12:45 p.m., the hearing was
10 recessed, to reconvene at 1:30 p.m., this same day.)

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1 JUDGE BRENNER: Back on the record.

2 Right after we broke for lunch, I spoke to
3 counsel for the Staff, and counsel for the County, and
4 emphasized that our preliminary inquiry for time
5 estimates was just that, and particularly, given
6 at least one of my comments yesterday with respect to
7 pointing out to the Staff, at least, if they had a point
8 in controversy, they had better litigate it. My time
9 inquiry should not be taken in the context of the fact
10 that it is Friday, as any pressure that any party,
11 the Staff or the county, should not make a full and complete
12 inquiry that they believe is necessary for their purpose.

13 Mr. Reis.

14 CROSS-EXAMINATION

15 BY MR. REIS:

16 Q Good afternoon. I'm Ed Reis, counsel for the
17 NRC Staff.

18 Mr. Pollock, for the purposes of GDC-1,
19 would it eliminate your objection to the terminology
20 "important to safety" if it was defined to include the
21 same equipment and processes included in your recent
22 March 8th, 1983, FSAR amendment submitted to the Staff?

23 (WITNESSES CONFERRING)

24 A (WITNESS POLLOCK) Mr. Reis, I'm just to
25 clarify in my own mind with my Staff here your question
relative to GDC-1, if I understand what you're saying,

1 that the programs that we have implemented address that,
2 the terminology, changing that terminology would
3 certainly satisfy. We feel we could abide by it. Again,
4 if we are addressing the GDC-1, and I thought that was
5 exactly what we had done when we discussed our terminology,
6 our program that we felt we could audit and it was looking
7 at it exactly in that vein.

8 Q You have expressed one of the matters that --
9 one of the limitations you put in your answer was things
10 you had implemented. What is the meaning of "things
11 you have implemented"? What is the limitation you
12 are putting on by adding on your answer?

13 A I don't mean to put any limitations on it.
14 The programs that are implemented and defined
15 have been defined that will be going into effect. Now our
16 preventive maintenance programs, plant surveillance
17 programs, the quality standards programs that have been
18 established in the construction and design effort that
19 will swing over into the operational aspect of it. We've
20 got a program that has well been defined, it is effective,
21 doing the job, and it is accepted, and that same
22 philosophy will carry through into the operational mode
23 of the plant.

24 Q That's to the same equipment and processes that
25 you have spelled out in those FSAR amendments of March 8th,

1 1983?

2 MR. ELLIS: Judge Brenner, may I have that
3 question read back? I'm not sure I understand it.

4 JUDGE BRENNER: All right.

5 (The reporter read the record as requested.)

6 MR. ELLIS: May I ask for a point of
7 clarification?

8 There isn't any specific equipment spelled
9 out in there.

10 JUDGE BRENNER: Well, all right. Wait a
11 minute. That's different. Unless you are going to make
12 an objection, let's not put words in the witness' mouth.

13 MR. ELLIS: Then I would have to object to the
14 question on the lack of clarity in the question.

15 I don't think there's been any --

16 JUDGE BRENNER: All right. The objection
17 is sustained.

18 Mr. Reis, why don't you pursue it by drawing the
19 witness' attention more particularly to what you have
20 in mind beyond a reference to the letter, if you can.

21 BY MR. REIS:

22 Q Drawing the witness' attention to the
23 nonsafety-related structures, systems and components and
24 plant computer software talked about in insert 1 of the
25 March 8th letter from LILCO -- insert A, excuse me -- of

1 the March 8th letter from LILCO to the NRC--

2 A (WITNESS POLLOCK) Yes, sir. I have it.

3 Q And if important to safety was defined to
4 include that equipment there, would you accept the
5 Staff's definition of important to safety?

6 A (WITNESS POLLOCK) Mr. Reis, both on the
7 conference on this side, and I'll come back to what
8 my answer was going to be to you, right at the offset
9 they just confirmed their thinking to me.

10 This insert, which is in our prepared
11 FSAR, is relative to the design conformance, and it
12 is a definition that we have proposed to the Staff that
13 we feel we can audit against. It does not limit the
14 equipment to the plant as nonsafety-related structures,
15 components, and systems. In fact, computer software
16 terminology was specifically added as part of our
17 discussion.

18 If the programs, if this is a definition and
19 an accepted definition of what the programs are, and
20 the definition of important to safety is defined in this
21 manner, I've got no problem with it. I'm struggling
22 with Mr. Denton's verbiage that does not define it
23 this way, and that's why we came to the Staff and said,
24 "Will this suffice, and will this do the job that you were
25 looking for?"

1 But that again, I must re-emphasize that our
2 programs in the past, in the present, and in the future
3 is addressed to every piece of equipment in the plant. We
4 do that analysis on what is its significance to safety
5 impact in the functional system.

6 JUDGE BRENNER: Mr. Reis, could I interrupt
7 just for one moment?

8 MR. REIS: Sure.

9 JUDGE BRENNER: Mr. Pollock, as I read the
10 proposed amendments to the FSAR and looking at the juxta-
11 position of how the inserts would add to the FSAR, I never
12 understood that the definition of important to safety
13 given on the first page attached to your March 8th, 1983
14 letter, which is a page from the existing FSAR page 3.1-2,
15 was changed by the amendment, and that still reads under
16 the subtitle "Design Conformance," as you pointed out,
17 structures, systems, and components important to
18 safety are listed in Table 3.2.1-1, and I never
19 understood LILCO as saying that they have any other
20 definitions.

21 I'm a little confused by the dialogue as talking
22 about the inserts as being a different definition.

23 I also understand the testimony on what
24 different parties believe the inserts accomplish, but I
25 didn't think changing that one sentence that I read was

1 one of them.

2 WITNESS DAWE: Yes, sir, the term "important to
3 safety," as it is used in that conformance statement
4 GDC-1, when it was written in the FSAR in 1976 and to
5 the present meant safety-related. That was our
6 interchangeable understanding. It says those things are
7 listed in that table. It does not say everything in
8 that table is important to safety with the understanding
9 everything in that table is safety-related. That is
10 shown on the table by the notes, by the commitment to
11 the Appendix BQA program, as opposed to in the
12 alternative for those things that are not Appendix B,
13 the QA specified by the design purchase documents.

14 The FSAR amendment that nonsafety-related
15 structures, systems and components of the plant will be
16 accorded the safety significance of the documents
17 mentioned, is a supplementary statement which says
18 that those programs which we've had and which were in
19 place for operations are committed to, will not be removed,
20 will not be lessened. It's a commitment to continue the
21 quality standard and the quality assurance that have already
22 been achieved in the plant, so it is truly a supplementary
23 statement.

24 JUDGE BRENNER: And is it, therefore,
25 correct -- following up on what you just said -- that
the nonsafety-related structures, systems and components

1 referred to in insert A -- as an example, there are similar
2 references in the other inserts -- would not be anything
3 beyond what is in Table 3.2.1-1?

4 WITNESS DAWE: No, sir, I think it would go
5 beyond what's in Table 3.2.1-1. It would go to what's in the
6 FSAR. What's in the technical specifications, what's
7 in the emergency operating procedures. In fact, if you
8 read an FSAR in detail, you will find that almost
9 everything in the plant is somehow, in some way addressed
10 in the FSAR.

11 We may address turbine support systems, for
12 example, and that may be hundreds of components. We
13 address them as a group, but they are addressed.

14 JUDGE BRENNER: Okay. Thank you.

15 BY MR. REIS:

16 Q For the purpose of regulation, then,
17 Mr. Pollock, do you accept -- would you accept a proposal
18 that equipment important to safety is that equipment
19 found in those three -- or items important to safety are
20 items found in those three documents specified in the
21 first sentence, particularly the FSAR, the technical
22 specifications, and the emergency operating procedures?

23 A (WITNESS POLLOCK) I'm sorry, Mr. Reis. I
24 missed the last portion of your question.

25 MR. REIS: May I have the question read back?

JUDGE BRENNER: Yes.

1 (The reporter read the record as requested.)

2 MR. ELLIS: Judge Brenner, we note an objection
3 for the purposes of regulation, which was the predicate in
4 the question is excessively vague and it ought to be
5 more specific.

6 JUDGE BRENNER: All right. Let's get that
7 specified. We had that problem the other day with
8 somebody else's question, also.

9 MR. REIS: Let me rephrase the question.

10 BY MR. REIS:

11 Q If you were told that the outer bounds of
12 important to safety for the purposes of GDC-1 was the
13 equipment addressed in your FSAR, your technical
14 specifications, and your emergency operating procedures,
15 would that eliminate the vagueness objection that you
16 have to the application of the term "important to
17 safety"?

18 A (WITNESS POLLOCK) No, sir. I don't feel that
19 way. We'll let Mr. Museler expand on it, if he would.

20 A (WITNESS MUSELER) Mr. Reis, we agree that
21 certainly all the equipment that is mentioned in the
22 documents that you have just referenced is required to
23 be evaluated as to its safety significance and accorded the
24 appropriate design and construction and operational
25 attributes that are relevant for its level of importance,

1 but we've left out of this discussion what is
2 done to those items, or what that level of significance is,
3 what level of design and operational quality assurances
4 apply to them.

5 Our programs have evaluated all of that
6 equipment individually. We've applied what we believe
7 to be the appropriate level of quality assurance to them.
8 We believe the Staff agrees with that level of quality
9 assurance, and our problem in the definition is that
10 the definition seems to go one without the other.

11 We think it has to go together.

12 We think the requirements imposed on the
13 equipment as a result of that evaluation have to be
14 addressed at the same time as what equipment is
15 evaluated.

16 A (WITNESS DAWE) If I could add just briefly to
17 that answer, you said if that were the outer bounds
18 of important to safety, and you did tie it to GDC-1,
19 and we certainly, in this commitment, made that the outer
20 bounds of everything we're doing for quality standards
21 and quality assurance, for GDC-1 purposes, particularly,
22 we've certainly come to that agreement that's what we
23 have been doing and should continue to do.

24 If I use the list as EG&G tried to do, use
25 a list, the EG&G work was to produce a list of important

1 to safety for QA purposes in anticipation of another rule
2 change which would have equated Appendix B to this list.
3 But then you have the question of that list. Is that
4 the same list every time the term "important to safety"
5 occurs? And it is that clarification problem
6 that we've had difficulty with.

7 BY MR. REIS:

8 Q Mr. Pollock, you talked about and the panel
9 talked generally about confusion.

10 Would you agree that if LILCO continues to use
11 the term "important to safety" and the Staff continues
12 to use it in a different way, there is going to be
13 confusion between us over the operating life of that plant?

14 A (WITNESS POLLOCK) Yes, sir, positively. It's been my
15 position with the Staff in talking with them that my concern
16 is just exactly that, as to the intent of what Mr. Denton's
17 memo was, and that we feel it should be clarified.

18 But now we're getting into a legal process, I feel. And
19 it should be done on a rule-making basis. I can't do it.

20 I can't take the letter and the ruling and
21 develop a procedure, so that's why we attempted to do it
22 in this manner.

23 A (WITNESS DAWE) Mr. Reis, if I might add just
24 briefly to that answer.

25 The converse question would be, if we used

1 the term "important to safety," would there be confusion
2 in the communications, and the answer to that question
3 is also, yes.

4 Without more definition, if we were to be
5 asked, is everything important to safety done this way,
6 I'm not sure that everybody would know what we're
7 talking about.

8 Q Could the confusion you talk about be significant
9 to the safety of the Shoreham facility?

10 (Pause)

11 (Witnesses conferring)

12 JUDGE BRENNER: While they are conferring,
13 Mr. Reis, I'm glad they didn't ask you to define what
14 you mean by "significant," but if they have trouble with
15 that in their answer, I'll understand it.

16 Go ahead.

17 WITNESS POLLOCK: I'm sorry about all the
18 discussion here, Mr. Reis. Could I have the question read
19 back?

20 (The reporter read the record as requested.)

21 BY MR. REIS:

22 Q Did this confusion over --

23 A (WITNESS POLLOCK) I think I have a direct answer for you. We
24 just got into a discussion, and I would like to be sure
25 of the discussion again, please.

1 Q Now, I don't know whether to put in the word
2 "significant" or not. If there is confusion over the use
3 of the term "important to safety," would that have
4 an effect on the safety of the operation of the Shoreham
5 facility?

6 A I don't believe so. The programs that we have
7 in effect are assuring that right now, and my problem
8 is, I can't audit against the present approach to the
9 utilization of this term, and that's why we've developed
10 and offered and thought I had accepted a program that
11 I can audit against.

12 I don't believe others can audit against the
13 memo.

14 Q I don't remember whether it was you or another
15 member of the panel said you could audit against
16 safety significance, but not against the term "important
17 to safety." Is that your feeling, also, Mr. Pollock?

18 MR. ELLIS: I object to the question, because
19 I don't think it accurately characterizes what was said.

20 JUDGE BRENNER: Pretty close. Why don't you ask
21 them the predicate, first, Mr. Reis, and then follow up
22 just to be sure.

23 BY MR. REIS:

24 Q Did a member of the panel say that it was
25 possible to audit against safety significance, but not

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1 important to safety?

2 A (WITNESS POLLOCK) Mr. Reis, no. I do not
3 believe that that was my answer. I believe it was
4 in response to Judge Carpenter's question of me
5 if, within one of the areas, safety significance was used
6 in lieu of important to safety, and I thought my answer
7 was one that I can audit against the programs that we have
8 defined.

9 I've got a program outline and bounds,
10 regardless of that I feel we can audit against, and
11 I don't believe my answer was, can I audit against a
12 term "safety significance" in lieu of important to
13 safety.

14 Q In other words, Mr. Pollock, am I to
15 interpret your answer to mean you can only audit
16 against the programs you presently have defined.

17 A (WITNESS POLLOCK) No, sir, that's not correct.
18 What I am saying is, I do not have programs other than
19 what I have defined that I can audit against, nor do I
20 feel that by accepting the words in Mr. Denton's
21 memorandum that I can in any way audit against that.

22 It's open-ended, the terminology is
23 vague, and I think we're really talking about terminology.

24 Q Mr. Pollock, in your answer you talked about
25 the definition in the Denton memorandum. If we go to use

1 the term of a definition of important to safety
2 to include just matters greater than safety-related
3 items, matters, would your answer be the same, or is it
4 tied to the particular words in the Denton
5 definition?

6 MR. ELLIS: May I have that question read back,
7 please?

8 JUDGE BRENNER: Yes.

9 (The reporter read the record as requested.)

10 MR. ELLIS: Judge Brenner, I object to the
11 question. I don't know what is meant by matters
12 greater than other items greater than.

13 JUDGE BRENNER: You don't have to know what is
14 meant by that to answer the question.

15 Objection is overruled. I won't assume
16 you have to know that.

17 WITNESS POLLOCK: Mr. Reis, I don't understand
18 the current definition within the Denton letter.
19 and the way you pose those words to me without leading
20 them, I would say that would make it worse. It's a broad
21 application of everything you've got has to be approached
22 from a safety consideration.

23 I'm saying I do that. Here's a way of
24 looking at it, that we can all look at, Staff personnel
25 can look at. What you just said to me again is my same

1 problem: with words. Define a specific program, put a
2 specific program together that everyone can look at with
3 bounds, and then I think no one has a problem with it.
4 The way you defined it to me, my perception would be,
5 it would even be more difficult. It would be less
6 well-defined.

7 BY MR. REIS:

8 Q Where does the ultimate responsibility for
9 the safety of Shoreham lie, with LILCO or the NRC Staff,
10 or the NRC?

11 A (WITNESS POLLOCK) It lies with LILCO, and
12 currently my office.

13 Q Are there items at Shoreham that are not safety-
14 related that could defeat a safety function at the plant?

15 A (WITNESS DAWE) I think Mr. Reis, you'd like
16 to phrase that question, are there items that are not safety-
17 related as opposed to other than not safety-related?

18 JUDGE BRENNER: Yes, Mr. Dawe. I don't
19 remember the way he phrased it, but why don't you include
20 the phraseology as part of your answer?

21 WITNESS DAWE: As we have designed the plant,
22 and as we analyzed it and evaluated the plant, we do not
23 believe there are nonsafety-related components in the
24 plant that can defeat a safety function. The safety
25 function there being those functions for which we've

1 designed being the same safety functions that are talked
2 about in the EQ rule, the function of protecting pressure
3 boundary of achieving and maintaining a safe shutdown or
4 mitigating accidents.

5 BY MR. REIS:

6 Q Is that answer applicable to the high level trip of the
7 injection coolant system?

8 A (WITNESS DAWE) Yes, sir, I believe it is.

9 Q Do you think it improper for the NRC
10 to have a utility define a set of equipment subject to
11 NRC requirements that would be necessary for it to
12 maintain a safe plant?

13 A (WITNESS DAWE) I believe that the NRC could
14 ask a licensee to do that.

15 I think in order to do that, one would have
16 to know quite specifically what functions, what roles,
17 what interactions, what relationships the commission
18 interpreted that to mean in order to provide the list that
19 the Commission felt it wanted to see.

20 As we've said earlier, with specific
21 references to lists, we don't think it would be wise
22 to arbitrarily start the list somewhere, because
23 then we're making judgments on when there is not enough
24 safety significance to continue listing it as opposed
25 to the philosophy of when you deal with something in the

1 plant, you deal with it with an understanding of
2 what it is, and what you're doing to it.

3 A (WITNESS POLLOCK) Mr. Reis, let me add to
4 that, too, because I've had discussions, I guess at one
5 or more of these meetings about the philosophies of
6 lists, again I have to say, and I think loud and clear,
7 that we've got a program that is addressing every piece of
8 equipment in that plant.

9 We are addressing it from the point of view
10 of the safety significance of the plant.

11 We've got a good program in the design and
12 construction. It's been acceptable by you all. It
13 has not been challenged.

14 Now, do I have a list in that plant? I have
15 a list in that plant, and it is a matter of documentation
16 and it has been presented as our preventative program, both
17 in the instrument area and in the maintenance area,
18 and it addresses the requirements defined by FSAR by
19 safety-related equipment, by equipment of size, by
20 equipment as to its safety significance, and I'll use the
21 word "safety significance," but it goes beyond that
22 where there is not a safety significance.

23 It also defines for the mechanic and for my
24 maintenance force, and instrument force in there, the
25 reliability of equipment that has no safety significance.--

1 sump pumps, a screen, what-have-you.

2 So is it a matter of your question addressing taking
3 that risk and bringing it up, or categorize it? My discussions
4 with Susquehanna Power, and Mr. Kenyon over there, what do they
5 have, they have lists -- they have their fire protection system
6 that was categorized, and it was in a list and they expanded
7 their lists to the point of having multiple.

8 His suggestion to me, his control problems in there
9 are sufficiently concerned about at this stage that he is probably
10 going to come back to the approach that we are taking of a master
11 preventative maintenance program.

12 I feel I've got the list. Take that list and chop it
13 up, and I could -- I will ask Mr. Rivello just to comment on this
14 because I feel very strongly about it. We have it categorized
15 and we have equipment identified in that area that can be pulled
16 apart.

17 Our analysis of maintaining the integrity of the plant
18 and addressing it properly on a program is better done by our
19 studies of the industry and what's been done, by the preventative
20 maintenance program that we have established.

21 I can stop now or ask Mr. Rivello to expand.

22 Q You need not expand on my account.

23 A (WITNESS POLLOCK) All right.

24 Q Is it the responsibility of Lilco to know the equipment
25 needed for safe operation of its plant?

1 A (WITNESS POLLOCK) Yes, sir.

2 Q Mr. Pollock, turning to 10 CFR 50.59(a)(2), the term
3 "important to safety" is used in that regulation.

4 Is it the position of Lilco that as used in that regu-
5 lation, "important to safety" is limited to safety-related equip-
6 ment or safety-related matters?

7 A (WITNESS POLLOCK) 50.59?

8 JUDGE BRENNER: Is that right, Mr. Reis, 50.59?

9 MR. REIS: Yes, sir.

10 A (WITNESS DAWE) Yes, sir, that was our interpretation.
11 If I might expand on that, that would not prevent me from consid-
12 ering a non-safety-related component to be sure that, if I made
13 a modification to it, it could not affect a safety-related func-
14 tion as a result of that modification.

15 I have to do a 50.59 review on every plant to determine
16 an unresolved safety question. If I could just look to the future,
17 or hypothesize, and I had a listing to "safety" and I brought that
18 list down and down and down, as you say, we bring it all the way
19 down to the bottom of the plant. And, if I put on that list
20 some component with low safety significance and I wanted to make
21 a modification to it, I would report that modification, but I
22 would not consider it an unreviewed safety question unless I was
23 going to increase the probability of an accident or increase the
24 probability of failure of something important to safety which,
25 there, to me, meant safety-related.

1 But that would not prevent me from doing a 50.59 eval-
2 uation to be sure I am right.

3 Q Do NRC inspectors have a right to inspect in program
4 areas that are non-safety-related?

5 A (WITNESS POLLOCK) Yes, sir, they do. They have in
6 the past and they will in the future.

7 Q Can they write findings in these areas and find vio-
8 lations in these areas if such violations exist?

9 A (WITNESS POLLOCK) Yes, Mr. Reis, they can. There is
10 nothing I can say that they cannot go to work in and write a
11 finding on what they have. If it is not covered specifically by
12 regulations and there is an agreement, then I believe there is a
13 proper route and a proper path for us to pursue.

14 But I never have and never will discourage in this
15 facility anybody with the ability and the capability, either
16 NRC inspectors or our own people, to look at that plant from a
17 safe functioning point of view and, if they have got a question,
18 they should not be limited if it is thought to be not regulatory.

19 We will certainly entertain and accept any inspection
20 by them. Will I challenge it? If we have a serious difference
21 of opinion, it could be challenged if it is not specifically
22 covered by regulation.

23 Q What you are saying is, if I hear you correctly -- and
24 tell me if I am wrong -- is that you will allow the inspectors to
25 go into these non-safety-related areas, but they have no legal

1 right to do so?

2 A (WITNESS POLLOCK) No, I did not say that, nor did I
3 intend to imply that. They have got a legal right to access
4 every place in that plant by my interpretation, but what I had
5 hoped I was saying to you, there is the legal process of regu-
6 lation within that and without that. When we have a difference
7 of opinion that cannot be resolved at the plant site on a dis-
8 cussion basis, then I think we have a legal recourse and a
9 route to follow. Certainly I did not mean to imply they don't
10 have a legal right.

11 Q As I recall at the time of the panel -- and correct
12 me if I am wrong -- testified that you can discern a boundary
13 to the application of NRC requirements to non-safety-related
14 equipment.

15 Did you so testify that way this morning?

16 A (WITNESS POLLOCK) I don't recall that, Mr. Reis, and
17 I don't think any of us do, specifically. If possibly you could
18 be more definitive with your thought, it might refresh us.

19 Q Did you testify that you could make a judgment as to
20 where NRC's authority extended into matters that were not safety-
21 related?

22 MR. ELLIS: Judge Brenner, I object to the question.
23 It is excessively vague. The regulations are extensive. It
24 is not focused on any specific regulation or any specific fact,
25 and I think it is impossible of any reasonable answer because

1 of the breadth and vagueness and extent of the regulations.

2 JUDGE BRENNER: Well, we are testing concepts here
3 as a baseline and I am going to give the cross examiner leeway
4 for that reason, particularly given that the question was
5 phrased as an inquiry of the witness, if they so testified.

6 A (WITNESS POLLOCK) I will answer again, and say no,
7 I don't believe we said that, but trying to find possibly what
8 you are pursuing, the only thing I can recall us saying was
9 that we can define very well what is safety related. That is
10 well defined by the regs.

11 That was not intended to go to work and say that is
12 where the examiner or the inspector is cut off.

13 A (WITNESS DAWE) Just a moment, Mr. Reis.

14 (Witnesses confer off the record.)

15 A (WITNESS DAWE) I also recall my testimony of this
16 morning that there are regulations such as Part 20, where we
17 provided in the plant non-safety-related components and systems
18 to comply with those regulations. And that the compliance with
19 those regulations, in terms of limits, I said Appendix I would
20 include non-safety-related, but it is a performance requirement
21 in the end that I am going to do the same as with Appendix I.

22 I also said this morning, for those regulations that
23 we interpret to mean safety related, that obviously, if we have
24 non-safety-related that prevents us from meeting the regulation
25 for safety-related, then that is well within the purview of the

1 Commission's regulations and we haven't met the regulations.

2 If I have a safety-related component, it has to meet
3 that regulation and, if I do everything possible in the design
4 and operation of that component to meet that regulation and then
5 have put in a non-safety-related component, that will defeat
6 the existence of that non-safety-related component, in my mind
7 would prevent me from meeting the regulation.

8 That is the design philosophy that we have, I think,
9 described in all of our testimony of the past year.

10 Q Mr. Pollock, you previously testified that you might
11 challenge an inspector or the results of an inspection, rather,
12 for going beyond the areas which the NRC can regulate.

13 A (WITNESS POLLOCK) No, Mr. Reis. I didn't say -- it
14 may have sounded like that. Let me correct it. What I was
15 saying to you was that, if an inspector goes into an area and
16 we expect him to be looking at every area within that plant,
17 be it covered by regulation or not, and he has a finding and
18 he, in his determination, with discussion with my staff and
19 my people, say his determination is a violation and we take
20 issue with his determination, I then feel, outside of the spe-
21 cific regulatory defined area, I have a right to challenge that
22 and say "we think your finding is wrong," not to challenge him
23 that he has a right to go in there and had a right to look at
24 it.

25 Q Are you saying that when you say you are challenging

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1 his finding, would you ever challenge his finding on the basis
2 of his authority or his jurisdiction to deal with the matter
3 upon which he finds his violation?

4 A (WITNESS POLLOCK) No, sir.

5 JUDGE CARPENTER: Would the base for your challenge
6 be any different than it would have been for safety-related
7 equipment?

8 WITNESS POLLOCK: Judge Carpenter, you jumped the gun.
9 I was going to add that to it. No, it would not. Fundamentally,
10 I think what I am saying to you is, on a very legal sense basis,
11 we would be dealing on a different set of ground rules within
12 the safety related area specifically covered by regulation.
13 In a non-safety-related area, it is not. If we had a difference
14 of opinion in either area, we would tend to challenge it.

15 JUDGE CARPENTER: Thank you.

16 WITNESS MUSELER: Judge Carpenter, I think the term
17 "challenge" is probably provocative from the standpoint of the
18 discussion we are having.

19 When we disagree with an NRC reviewer or NRC inspector,
20 the disagreement is generally -- well, the disagreement is never
21 in terms of jurisdiction or the right of the NRC regulator to
22 look at and question and write findings on any components.

23 The kinds of challenges that we are speaking of here
24 are in the nature of what are the real acceptance criteria that
25 should be applied to whatever it is that the NRC inspector may

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1 be looking at, what are the tolerances, and the tolerances are
2 different, because the program is a graded program, and that
3 gets back to some of Mr. Reis' questions that the concern is
4 in our mind that we understand the programs we have and we know
5 the requirements of those programs as they are currently existing,
6 and we think the NRC, both reviewers and inspectors, are famil-
7 iar with those programs.

8 Our concern is that an acceptance of a definition that
9 is, to our mind, undefined might mean something different than
10 that and for us to commit to something different, we don't know
11 what "different" means. But I guess I have strayed from the
12 question, but basically it is, we don't challenge their right
13 to inspect and write findings.

14 We discuss the applicable regulations, reg guides,
15 code criteria, and that is the basis for our disagreements with
16 them when we have them.

17 JUDGE BRENNER: And Mr. Reis, I don't know if you are
18 familiar with past portions of the record, and certainly it is
19 understandable if you are not. There has been so much, and
20 I know you haven't been here for all of it, but the Board had
21 a particular example at one time that stimulated this inquiry.
22 It was an I & E report and we, on our own, asked for local
23 witnesses to come back, and we asked them questions about it.

24 Mr. Museler was one of those witnesses, so we have got
25 testimony on a particular example in terms of interplay between

1 the staff and local and an I&E report on something non-safety-
2 related in local's review.

3 MR. REIS: Let me say this, that my questions were not
4 prompted by that situation. I didn't even know about it.

5 JUDGE BRENNER: I am suggesting that the general abstract
6 questions add less than the particular questions surrounding
7 that example, although maybe when we put it together, we will
8 have something else, too.

9 BY MR. REIS:

10 Q I would like to ask, Mr. Pollock, you previously talked
11 about a difficulty you had with defining the outside boundaries
12 of the term "important to safety" if it had any other meaning
13 than safety-related; is that correct?

14 A (WITNESS POLLOCK) Yes, I believe that is proper.

15 Q Then from that, do you reason that because you cannot
16 define the outer boundaries of "important to safety" except if
17 it means "safety-related", that would have to necessarily mean
18 safety-related?

19 (Witnesses confer.)

20 A (WITNESS POLLOCK) Obviously I am finding it difficult
21 to answer your question. I think my answer to it is no, but I
22 do not term that as functionally that we are looking about now
23 in Mr. Denton's memorandum, and I agree with Dr. Mattson and
24 others of the confusion aspect that exists right now.

25 The structure and utilization of the term "important

1 to safety" over the years, by every applicant, by every licen-
2 see, in our judgment, and what we have seen, "important to
3 safety" and "safety related" has been one and the same thing.
4 But I agree wholeheartedly with Dr. Mattson and others down
5 there that there is confusion and there should be clarification.
6 I have no issue with that.

7 But to say to us, "here is a letter and you should
8 adopt this" when there has been such varied interpretation of
9 it without that being clarified, without that going through a
10 process of determining exactly what it means, gives me absolutely
11 nothing to audit against, and I know I am repeating it myself,
12 but it does leave it open-ended.

13 I know we are doing it. I know we are approaching the
14 "important to safety" as you are talking about now. If the
15 functional aspect of it is other than safety-related, we are
16 doing it with our programs. I feel for my organization what
17 we presented to staff in wording something, I can assure you
18 that will be done and the intent of Mr. Denton's memorandum
19 will be implemented. But there is just a long-time use of --
20 as is explained in his letter -- of the use of "important to
21 safety." We have always interpreted that and used that "safety
22 related."

23 A (WITNESS MCCAFFREY) Mr. Reis, before there was a
24 line of questions that implied you wanted to actually cut off
25 the list of equipment at some point by using it at the SRP level.

1 It seems to me the more you look at it, one must conclude it
2 doesn't contain everything beyond the safety related. But I
3 think you are looking at the program that goes beyond what you
4 are driving at, without this hypothetical list being put together.

5 We have got a program. It is about to be documented
6 forever, and it will provide assurances you are looking for,
7 but I think we have to agree upon what the word "important"
8 means. You have got the program. It does it functionally.

9 Q What regulatory requirement can you see there are
10 in preventing those changes in those programs as you have
11 spoken of?

12 A (WITNESS MCCAFFREY) The only changes I was foreseeing
13 in those programs over the years would be improvements to the
14 programs. We have said those are living programs, that con-
15 stantly take feedback from industry, seek new programs, do
16 things that enhance it. We have a basic commitment to keep
17 the plant as good or better than it is now.

18 I could foresee a code coming along. That is an
19 improvement. We decide to adopt the code to some plant struc-
20 ture to improve its safety significance.

21 JUDGE BRENNER: Mr. McCaffrey, I don't think you
22 answered Mr. Reis' question, although maybe I should let Mr.
23 Reis determine that by himself. Do you think that answers
24 your question, Mr. Reis?

25 MR. REIS: I don't think it answers my question, but

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1 I was just going to go on to another subject.

2 JUDGE BRENNER: All right, I will leave that up to you.

3 A (WITNESS DAWE) Mr. Reis, I think there are a number
4 of things, but the two most important are that we have put in
5 place a plant that I am sure the staff agrees is there properly.
6 A formal commitment has been made to the staff in the FSAR not
7 to change that plant. Even without that commitment, if that plant
8 were changed that would be reported to the Commission no later
9 than within a year because of the FSAR update rule. If the
10 change changes something that is in the FSAR. There are certainly
11 other reporting requirements.

12 JUDGE BRENNER: Mr. Dawe, is that related to your
13 previous -- let me ask this, even without the FSAR commitment
14 made by local, would your previous answer as to the analysis
15 you would have to do to determine the applicability of 50.59
16 that you discussed before, would that still be the case? My
17 memory is you testified that you would have to do an analysis
18 to see whether the criteria of 50.59 requires a reporting
19 rather than starting out from a predetermined notion that
20 something was not safety related and let it go at the outset
21 at that?

22 WITNESS DAWE: Yes, Judge Brenner, I think you char-
23 acterized it correctly. Every modification is applicable to
24 50.59 for evaluation. I think the evaluation only tells you
25 when you are doing -- whether something you report before you

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1 make the modification or something you report after the modi-
2 fication, but you do report the modification one way or the
3 other.

4 BY MR. REIS:

5 Q Gentlemen, won't you go beyond the staff definition
6 of "safety related" in applying the QA programs in your plant?

7 A (WITNESS POLLOCK) Yes, sir, of course we do. The
8 appropriate level of QA is applied to the various programs and
9 equipment.

10 Q How do you decide where to stop those QA programs,
11 how to turn them off, what equipment they should apply to and
12 what equipment they should not apply to?

13 There are several questions there and, if you want me
14 to break it up, I will.

15 (Witnesses confer.)

16 A (WITNESS POLLOCK) Mr. Reis, I am certainly not going
17 to ask the people to go back into a tremendous amount of history
18 that is on the record, and I don't want to bore you or certainly
19 the Board with it.

20 On any program, any QA program assessment of what the
21 impact is on safety significance, or the application of a quality
22 program, that is based on judgment. Where does judgment come
23 from? It comes from individual experience in the various
24 fields, working with the equipment, operating the equipment.

25 It comes from industry sources that are available to

1 us. It comes from the vendor sources as to exactly what might
2 be found or what we should look at. This is not unique to Long
3 Island Lighting Company. It's programs that are developed
4 throughout the industry on an operating history basis, so it
5 is a judgment factor that is applied.

6 Q You apply a judgment factor there. Do you also apply
7 a judgment factor to determine what equipment in your plant is
8 safety significant?

9 A (WITNESS POLLOCK) I don't have a list of safety sig-
10 nificant equipment, but in the development of the programs,
11 what maintenance will be applied, every piece of equipment is
12 looked at relative to its function within that plant, and its
13 impact on safety, reliability, operability, maintainability,
14 and appropriate programs have been and are developed and will
15 continue to be developed.

16 Q In the next question I am going to ask the term "im-
17 portant to safety" to mean something more than safety related.
18 Let me ask the panel, can an item be of safety significance
19 and not be important to safety?

20 A (WITNESS DAWE) Mr. Reis, if you use the term "important
21 to safety" that would be defined in the dictionary, no. If you
22 use it in a regulatory sense, that is a legal question that I
23 think demands a rulemaking.

24 JUDGE BRENNER: The other latent ambiguity you probably
25 didn't realize, Mr. Reis, is when you say "something more" did

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1 you mean "beyond" or "inclusive of" safety related, and that
2 is Mr. Conran's point, that sometimes people get tired and just
3 say "important to safety." But instead of adding "but not
4 safety related," and I want to welcome you to the world of
5 this dialogue on this language which we have had before and
6 continue to have.

7 MR. REIS: That's all I have.

8 JUDGE BRENNER: Judge Morris asked me to say you are
9 right on time, and you may be the first and last attorney in
10 this proceeding to hit it on the nose.

11 We have had many that went over, and a few that went
12 under.

13 MR. REIS: I said less than an hour, so I guess I did
14 it --

15 JUDGE BRENNER: I think you are out in less than an
16 hour, 59 and a half minutes.

17 Ms. Letsche, do you have questions?

18 MS. LETSCHE: I don't right now, Judge Brenner, and
19 I did review my notes preliminarily over lunch. I will, however,
20 after I review the transcript, if I feel the need to notify
21 the Board of a desire, if I have one at that point to pursue
22 it as you suggested earlier.

23 JUDGE BRENNER: Consistent with our discussion before,
24 I am not going to prohibit you from doing that, nor could I.
25 Even if I could, I wouldn't, but you have to make the showing

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1 we discussed, particularly given the fact that you did have
2 the opportunity for the break.

3 Let's not leave this open-ended, but I don't know
4 whether I set a particular time frame. If you are going to
5 file something or just perhaps, it's perfectly appropriate
6 since we know each other very long in this proceeding, just
7 to let you know it will have to be filed promptly, and you
8 use your judgment on what you think I mean by promptly.

9 MS. LETSCHE: I will certainly do that, Judge Brenner.

10 JUDGE BRENNER: Thanks. In the neighborhood of days
11 is what I mean. Is that what you mean, also?

12 MS. LETSCHE: Yes, it is.

13 JUDGE BRENNER: Mr. Ellis, do you have any redirect?

14 MR. ELLIS: Yes, sir, I have.

15 JUDGE BRENNER: It might be direct in the first instance,
16 but I don't know any more.

17 MR. ELLIS: Yes, sir, it is in the nature of follow-up,
18 I think.

19 JUDGE BRENNER: About how much time do you have, do
20 you know?

21 MR. ELLIS: I would estimate just a few minutes.

22 JUDGE BRENNER: All right. Why don't you proceed?

23 DIRECT EXAMINATION (CONTINUED)

24 BY MR. ELLIS:

25 Q Mr. Pollock, we have been talking about the Denton

1 memorandum a good deal. What do you understand to be the basic
2 or broad concept or philosophy underlying the definition of the
3 term "important to safety" in the Denton memorandum?

4 A (WITNESS POLLOCK) My understanding of that, Mr. Ellis,
5 is that the basic definition of "important to safety" is that
6 non-safety-related equipment, as classified in the plant, can
7 have, in certain instances, a safety significance and that
8 appropriate consideration should be given to the design, con-
9 struction, and maintenance of that equipment during the design,
10 construction, and operational phases of the plant.

11 We do that. We have done it in the past. We will
12 continue to do it. It has been presented as such that way.

13 Q Is local then in agreement with the philosophy, as you
14 understand and describe it?

15 A (WITNESS POLLOCK) I have absolutely no disagreement
16 with the philosophy as I understand it.

17 Q Now, does local implement that philosophy?

18 A (WITNESS POLLOCK) Yes, sir, we do. We have in the
19 past in our programs. We are currently doing it. We are going
20 to do it in the future.

21 Q Now, questions were asked concerning how this philo-
22 sophy would be implemented in the future by a maintenance
23 engineer 20 years hence who was not here at the inception, so
24 to speak. How is that accomplished?

25 A (WITNESS POLLOCK) The programs that we have in effect

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1 are well documented programs as to what has to be applied, and
2 any man, be he a new man here 20 years hence, will have those
3 well-documented programs as guidelines and he will have to
4 function under them.

5 Q Mr. Rivello, you indicated, also, in connection with
6 the operator 20 years hence, that I think you said, "hopefully
7 he would be qualified." Is there a local requirement that the
8 maintenance engineer be qualified?

9 A (WITNESS RIVELLO) Definitely is, but I thank you for
10 allowing me the opportunity to retract that. There are require-
11 ments that must be met both on our part and the NRC's, very
12 quickly, that he must have a bachelor of science degree, engineer-
13 ing related in science, some four years of power plant experience,
14 two years nuclear power plant, and some particular experience
15 at an operating plant.

16 Q So there are both local and NRC requirements?

17 A (WITNESS RIVELLO) Yes, sir, there are.

18 Q Mr. Lawe, you were asked a number of questions concerning
19 50.59, Part 50, which is "environmental qualification of electric
20 equipment important to safety for nuclear power plants."

21 Is that a recent regulation?

22 A (WITNESS DAWE) Yes, sir, it is. It was issued in the
23 last couple of months. I believe in January it became effective.

24 Q Was there a previous NRC regulation that governed
25 environmental qualification of electric equipment?

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1 A (WITNESS DAWE) I believe there was, although not
2 explicit. Certainly GDC-4 covered environmental qualification.

3 Q In GDC-4, what term was or is used to define the group
4 of electrical equipment to be environmentally qualified?

5 A (WITNESS DAWE) The term used, Mr. Ellis, is "important
6 to safety."

7 Q And how has the term "important to safety" in GDC-4
8 been applied with respect to electrical equipment over the years
9 that you have been involved as a licensing engineer?

10 A (WITNESS DAWE) I believe it was applied to safety
11 related, both in the Commission's guidance and in the industry's
12 application.

13 Q Was that a consistent application and construction by
14 the NRC?

15 A (WITNESS DAWE) Yes, sir.

16 Q Is the definition in 50.59 that now exists for the
17 electrical equipment to be environmentally qualified more or
18 less precise than it was under GDC-4 in your view?

19 A (WITNESS DAWE) I think it certainly is more precise,
20 but it goes to a specific part of the plant, which is electrical
21 equipment. It goes to the specific functions to be protected
22 and the ways to be protected. It does add non-safety-related,
23 but it tells me exactly, functionally, the requirement on
24 non-safety-related, which does not allow it to prevent the
25 performance of safety related functions that are also embodied

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1 in the regulation.

2 So I think that this rule, which is very specific,
3 which resulted from rulemaking, is something that we all under-
4 stand. It's a step to make the regulations specific. The rule
5 would do exactly the same thing. Of course, if, in front of
6 it, it didn't have the term "important to safety" it would
7 still require the safety related and the non-safety-related
8 equipment that could affect safety. But this is a rule that
9 is precise; it's functional; it's a comfortable rule. We can
10 understand this but it is more specific than GDC-4 in its terms.

11 Q Is the group of equipment that is defined as "important
12 to safety" in 50.49 the same as would be required in other
13 parts of the regulations that use the term "important to safety?"

14 MS. LETSCHE: I object to that question. It charac-
15 terizes the regulation improperly.

16 JUDGE BRENNER: Offhand I don't know how it does that,
17 Ms. Letsche, so maybe you could tell us a little more.

18 MS. LETSCHE: Yes, I can, but I believe Mr. Ellis'
19 questions, according to my notes at least, refer to the defini-
20 tion of equipment important to safety that is set forth in 50.49.

21 I believe what is set forth in Section 50.49 is a
22 definition of the electric equipment that is important to
23 safety, that that is covered by that section. That is not the
24 same as a definition of equipment important to safety.

25 JUDGE BRENNER: All right, but that does not negate

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1 the question he is asking about as an example beyond that
2 context. But you are correct about the particular context of
3 50.49, but we know that, and even given that, now you have
4 expressly reminded us. That question is acceptable.

5 MR. REIS: Mr. Chairman, I also have an objection.
6 Essentially it called for a legal conclusion. Now, I realize --

7 JUDGE BRENNER: Overruled.

8 MR. REIS: He can ask questions when --

9 JUDGE BRENNER: Overruled. You have another one?

10 MR. ELLIS: Is that a --

11 JUDGE BRENNER: You win without saying anything.

12 MR. ELLIS: Yes, sir, I would hope so.

13 JUDGE BRENNER: Let's not be cocky about it.

14 (Laughter.)

15 JUDGE BRENNER: Go ahead.

16 Do you remember the question?

17 WITNESS DAWE: I would like to have the question re-
18 stated after all of that.

19 (Whereupon, the following question was read by the
20 reporter: "Is the group of equipment that is defined as 'important
21 to safety' in 50.49 the same as would be required in other parts
22 of the regulations that use the term 'important to safety?'")

23 WITNESS DAWE: I really don't know the answer to that.
24 Maybe Ms. Letsche said it the best. What I do know, it is
25 electrical equipment important to safety that is covered by this

1 rule. Whether it is all the electrical equipment important
2 to safety where important to safety is used elsewhere? This
3 rule doesn't say that. That's part of the problem with the
4 term.

5 BY MR. ELLIS:

6 Q When you say that is part of the problem with the term,
7 what you are saying is, the reason you don't know it is the
8 vagueness of the definition of "important to safety?"

9 A (WITNESS DAWE) Yes, I think that's it. This is a
10 functional definition for a specific purpose. It's -- that's
11 the way the regulation -- it is a step forward, but it won't
12 do everything everywhere that the regulation uses the term.
13 That doesn't clarify it.

14 A (WITNESS MCCAFFREY) Mr. Ellis, if I could add to
15 that, my view of it is, in this area of the environmental
16 qualification, the Commission has established a group called
17 "Important to Safety Defined with Criteria". That to me seems
18 to be a subset of the broader area of "important to safety"
19 used elsewhere which has yet to have the criteria applied to
20 it like this does.

21 Q In your opinion, Mr. Dawe, or Mr. McCaffrey, either
22 one, how should that definition be arrived at -- a further
23 definition of "important to safety" that you testified is
24 necessary?

25 A (WITNESS DAWE) I believe it should be the subject of

1 rulemaking, where everybody sits down and discusses it and
2 defines it if you don't want confusion in the future as to what
3 the term means.

4 JUDGE BRENNER: I know I am going to be sorry, but
5 let me try this.

6 If "important to safety" were defined as encompassing
7 equipment whose failure could prevent satisfactory accomplish-
8 ment of safety-related safety functions, wherever the term
9 "important to safety" is used in the regulations, is that a
10 definition that Lilco would agree with?

11 What I tried to do is give you the definition in
12 50.49(b)(2) but not limit it to electric equipment or failure
13 under environmental conditions.

14 (Witnesses confer.)

15 WITNESS DAWE: Judge, if I may come up, I personally
16 would really have to think about that, but I am not sure that
17 would be the right direction to move people because, in the
18 first place, I don't want non-safety-related equipment that
19 could prevent the safety function and, if I found that, my
20 first inclination would be rather than to call it something
21 else would be to remove that design problem.

22 Also, I just don't see how that safety-related and
23 non-safety-related as we defined it really means. I understand
24 what you are trying to ask me, but I'm not sure how to answer
25 your question. So that maybe it is a philosophical question.

1 JUDGE BRENNER: Maybe this will help. This is the
2 next question I was going to get to. It sounds as though you
3 had just gotten there yourself.

4 One local uses the term "safety related." Does that
5 include equipment whose failure could prevent accomplishment --
6 no, it's a tautology.

7 All right. Let me go at that and come back to Mr.
8 Ellis. I understand what you are saying, Mr. Dawe, particularly
9 as put together with everything else we have on the record.
10 Some of us here were here last spring.

11 BY MR. ELLIS:

12 Q So that we can clarify it, though, Mr. Dawe, would a
13 definition of that sort that gives a functional criteria be
14 the kind of definition that you referred to as being required
15 for the term "important to safety?"

16 A (WITNESS DAWE) As a form of definition having that
17 functional requirement stated for me, yes, it would give me
18 a definition that I could assess any component to.

19 Q Assume the question is "important to safety" as 50.49
20 (b) (2) but not restricted to electrical equipment?

21 Do you have that assumption?

22 A (WITNESS DAWE) Yes, sir.

23 Q Now, if that were the assumption and, assume further
24 that Lilco were to apply quality standards and quality assurance
25 to "important to safety" structures, systems, and components as

1 that is defined, would that in fact be narrower or broader than
2 what Lilco currently does?

3 A (WITNESS DAWE) I believe it would be a lot narrower
4 than what Lilco does. In fact, what we currently do, I believe,
5 would put nothing in the "important to safety" subset that
6 isn't already safety-related. Our design philosophy, again,
7 is not to allow that to happen. That's old ground.

8 Q Mr. Dawe, let me return for a minute to environmental
9 qualifications. There has been testimony that everything in
10 the -- that a definition of "important to safety" would be
11 everything that is in the standard review plan.

12 Is everything in the standard review plan required
13 to be environmentally qualified?

14 A (WITNESS DAWE) No, sir.

15 Q Is that one of the difficulties with the use of the
16 term "important to safety" as it currently is defined if the
17 set is different in different contexts?

18 A (WITNESS DAWE) It's an example of the difficulty,
19 yes, sir.

20 Q Mr. Pollock, I think you were asked by Mr. Reis --
21 and you testified that it was Lilco's responsibility to know
22 what is required for the safe operation of the plant -- in your
23 opinion, does Lilco know that?

24 A (WITNESS POLLOCK) Yes, sir.

25 JUDGE BRENNER: I know I heard that answer before, but

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1 it is not necessarily precisely the answer to that question,
2 though.

3 BY MR. ELLIS:

4 Q Mr. Dawe, I am correct, in your earlier testimony,
5 you did acknowledge that regulations extended to non-safety-
6 related as well as to safety-related?

7 A (WITNESS DAWE) Yes, sir.

8 Q Do you agree with that, Mr. Pollock?

9 A (WITNESS POLLOCK) Yes, I do.

10 MR. ELLIS: That completes our questions, Judge
11 Brenner.

12 JUDGE CARPENTER: I just want to follow up on that
13 and ask Mr. Dawe -- he expresses the view that this should be
14 resolved by rulemaking.

15 What does he suggest this Board do in the meantime?

16 JUDGE BRENNER: Don't ask him that.

17 JUDGE CARPENTER: I just want to leave you with that
18 thought.

19 WITNESS DAWE: As opposed to answering it?

20 MR. ELLIS: Judge Brenner, we are prepared to answer
21 that.

22 JUDGE BRENNER: All right, but don't be too insulting.
23 Only because you are insisting, Mr. Ellis, your
24 witnesses can remind you of that later.

25 (Laughter.)

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WITNESS DAWE: Welcome, and Mr. Ellis says we can answer that, but he is the lawyer, and I don't know what powers the Board has to order a rulemaking or otherwise. But I honestly believe that this plant is safe; it was designed safe and will be operated safely.

I think the programs in place that we are committed to will do that. I think the Board can find that ruling.

I think we have said that we don't think the term "important to safety" by itself adds safety. I think it should be fully aired. I think the question of what the term is is just now becoming known. We know a lot about it. A lot of people don't know much about it, that it even exists as a controversy. Even the industry standard groups are just now beginning to try to figure out how to address it.

A (WITNESS MUSELER) Judge Carpenter, I don't want to leave any implication that the fact that we are having a difference over this particular term of "important to safety" as applied to non-safety-related equipment means, by any stretch of the records, that we don't believe that the non-safety related group requires attention because of its potential safety significance. We think that the records support our record and the NRC staff's investigations of Shoreham and inspections of Shoreham support our position that in a non-safety-related area we have applied all the appropriate, real functional requirements to that equipment, not just in its

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1 initial design, but in its construction. And the programs are
2 in place to afford it the safety significance it requires during
3 operation.

4 So from a functional standpoint, from what that plant
5 needs to be in order to safely operate for the next 40 years,
6 we think what we have done and what we have committed to do in
7 the future does form the basis for a finding that the plant
8 is going to be safe to operate, irrespective of the fact that
9 we have a semantic difference with the staff.

10 We feel strongly because we think it will be less
11 safe for us to commit to a definition which, frankly, is very
12 ill-defined, and we think that that will cause a lot of confu-
13 sion and a lot of backing and filling which, at the time both
14 NRC and ourselves could much better spend in applying the
15 resources to reviewing and implementing the existing programs
16 that we have.

17 The staff hasn't said they want us to do anything
18 different. If, what we have done is acceptable, then certainly
19 that is the bottom line, and a disagreement over what a word
20 means, we don't think is significant to the safety of this
21 plant.

22 Judge Brenner, that completes our questions.

23 MR. ELLIS: I had one follow up as a result of that.

24 JUDGE BRENNER: A follow up to that question?

25 MR. REIS: I had a follow up comment, too, on the

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1 basis of Mr. Ellis' questions -- two very short questions.

2 MR. ELLIS: Shall I finish mine first?

3 JUDGE BRENNER: Let's go back to Mr. Reis, and you can
4 finish up.

5 RECROSS EXAMINATION

6 BY MR. REIS:

7 Q Mr. Dawe, you testified to the adoption of Rule 50.49
8 in its present form. Were you aware when you testified of the
9 Commission's statement and statement of consideration that this
10 rule codifies existing requirements?

11 A (WITNESS DAWE) I would like to look again at the
12 statement of considerations. I am aware that there were
13 changes in the wording of the rule from the time it was proposed
14 until the time it was accepted.

15 I am also aware of just a lot of changes about the term
16 in the interim in which the Commission set it.

17 Q Mr. Dawe, if one limited the definition of the term
18 "important to safety," to only that equipment whose failure
19 could prevent the accomplishment of safety functions, would
20 that exclude most of the normal reactor controls?

21 A (WITNESS DAWE) Would you repeat the question, please?

22 Q If one limited the definition of the term "important
23 to safety" to only that equipment whose failure could prevent
24 the accomplishment of safety functions, would that limitation
25 exclude most of the normal reactor controls?

1 A (WITNESS DAWE) Mr. Reis, depending on your definition
2 of "normal reactor controls" it would exclude some of them.
3 I am not sure it would exclude most of them.

4 MR. REIS: Thank you, Your Honor.

5 JUDGE BRENNER: Mr. Ellis?

6 REDIRECT EXAMINATION

7 B. MR. ELLIS:

8 Q Mr. Dawe, in response to the question that Judge
9 Carpenter put, you indicated that -- I believe you said -- that
10 industry groups or industry standards -- what did you mean by
11 that? I think you said industry groups or standards were now
12 considering the problem.

13 What did you have in mind?

14 A (WITNESS DAWE) I had in mind, Mr. Ellis, the fact
15 that the Nuclear Standards Board Ad Hoc Committee of ANSI was
16 trying to develop a policy statement on the impact of the term
17 "important to safety" as contained in the Denton memorandum
18 to standards work, current and future.

19 Q By ANSI, the American Nuclear Society --

20 A (WITNESS DAWE) No. The American National Standards
21 Institute, or ANS, the IEEE, or ASME, which all function
22 through the NSB, standards board, for nuclear standards.

23 Q Are you aware of any statement that this group has
24 made in connection with this situation?

25 A (WITNESS DAWE) Yes, sir, I am aware that the ad hoc

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1 committee has developed a proposed position for the Nuclear
2 Standards Board as a whole to consider.

3 Q Let me show you, if I may, Mr. Dawe, a letter dated
4 March 30, 1983 from Mr. Walter H. D'Ardenne, Chairman, Ad
5 Hoc Committee on "Important to Safety." To Mr. George L. Wess-
6 man, and three-page document, one-page letter, and a statement
7 on a page entitled "Ad Hoc Committee on Important to Safety
8 Recommendation," and the third page is an attendance list,
9 indicating the persons referred to or who attended the meeting.

10 Is that what you were referring to?

11 A (WITNESS DAWE) Yes, sir.

12 MR. ELLIS: I would like to have this marked as Lilco
13 Exhibit 65.

14 JUDGE BRENNER: All right. It will be marked.

15 (The document referred to was
16 marked for identification as
17 Lilco Exhibit Number 74.)

18 MS. LETSCHE: Judge Brenner, I recognize it hasn't
19 been moved into evidence --

20 JUDGE BRENNER: Nor will it be admitted into evidence.

21 MS. LETSCHE: I also want to note my objection to
22 this line of questioning as being follow up to the Board's
23 question. But I think it's considerably far afield.

24 MR. REIS: The staff concurs in that -- a separate
25 objection.

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1 JUDGE BRENNER: It's the old piggyback problem. It
2 follows to the answer more than the question, and it doesn't
3 add anything. It shows that Mr. Dawe had a tangible basis
4 in his mind for saying that some industry group was working
5 on it, something which nobody ever challenged, and the sub-
6 stance isn't going to stand for the truth of anything in here.

7 We already accepted Mr. Dawe's testimony on that.
8 Yes, indeed, they are working on it, and I never doubted the
9 accuracy of Mr. Dawe's statement unless and until somebody
10 was going to challenge it, and nobody did.

11 I am not going to admit this for the fact -- the view
12 of the committee as to what these terms mean should be accepted.
13 I have got enough live witnesses to tell me, and an infinite
14 number, that they think the term should mean, and we will take
15 a look at any legal type argument in the proposed opinion,
16 considerations, and so on.

17 MR. ELLIS: May I have an opportunity to ask some
18 questions about it that I think will demonstrate that he has
19 a basis to express a view?

20 JUDGE BRENNER: I can predict it is not going to be
21 useful, Mr. Ellis, really.

22 MR. ELLIS: For the record, then, may I proffer it
23 and indicate that --

24 JUDGE BRENNER: Yes, go ahead. Make a proffer.

25 MR. ELLIS: Mr. Dawe was present at the meeting and

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1 is aware of the recommendation that is contained on the second
2 page, which I think is relevant and pertinent to the subject
3 that we have had under discussion, and particularly with the
4 question of what should the Board do in the interim. The
5 statement is made clearly in the recommendation that "the
6 current practice utilizing two major classifications, safety-
7 related and non-safety-related, for design, construction,
8 testing and operation of nuclear power plants is acceptable
9 and appropriate. This has occurred . . ."

10 JUDGE BRENNER: Are you going to read the whole
11 letter?

12 MR. ELLIS: I am going to read the first paragraph.

13 JUDGE BRENNER: Do you want us to read the first
14 paragraph?

15 MR. ELLIS: Yes, sir.

16 JUDGE BRENNER: So what else is new?

17 MR. ELLIS: My point is that the Board asked what
18 should be done pending a rulemaking. What is being done,
19 again, is as has been testified to, and this supports it from
20 the American Nuclear Society, this particular subcommittee,
21 that what is being done is adequate and that there should
22 be --

23 JUDGE BRENNER: We are only going to make those
24 findings one way or the other based on the record and the
25 parties will point out to us in their posthearing submittals,

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1 and have already done so to a large extent in a prior proposed
2 findings and opinions and conclusions of law as to what we
3 should do.

4 We will look at them for guidance from each party as
5 to what we should do, and, of course, if that guidance happens
6 to be based on the record.

7 The fact, you get some ideas as to how you phrase
8 it from whatever information you have available is perfectly
9 proper. You can be stimulated by things not in the record in
10 terms of how you phrase your proposed opinions and findings
11 and so on, and you don't need to ask a witness about those
12 types of things.

13 Even if I am wrong on the evidenciary ruling, we
14 just would not admit this for the truth of the matter asserted
15 without somebody here to question other than the people who
16 are here.

17 There is the additional point that it is just cumula-
18 tive. I think it is safe to say that on any subject in this
19 record it is sufficient, and that is why Ms. Letsche is going
20 to have a severe problem of finding anything -- not a problem,
21 that is not an actual prediction.

22 MR. ELLIS: Mr. Dawe was present and can respond.

23 JUDGE BRENNER: It is not necessary on a cumulative
24 basis. He has already been asked directly. Other people have
25 been asked directly that are here as witnesses for Lilco.

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1 It is my judgment that it is not going to add anything
2 coming from him, and certainly you didn't need the letter to
3 ask him, either. It's going to come down -- because, if you
4 ask it that way, it is going to come down to his understanding
5 of what attachment to an ANS letter means, and that is not
6 efficient or productive.

7 But we will accept it as an exhibit for identification,
8 and in fact, bind it in for convenience at this point so every-
9 one will understand the discussion we just had.

10 (The following exhibit is bound.)

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1 JUDGE BRENNER: Put the first paragraph in your
2 opinion, you know, and look for the transcript cites to support
3 it. I take it no other party has any follow up on the follow
4 up?

5 MS. LETSCHE: County has none.

6 MR. REIS: The staff has none.

7 JUDGE BRENNER: We have none.

8 Gentlemen, let me thank you and excuse you at this
9 point in case you want to get out. We are going to talk to
10 each other for a few more moments.

11 I thank you for your time in coming here, particularly
12 considering the short notice.

13 WITNESS POLLOCK: We appreciate the opportunity.

14 JUDGE BRENNER: The findings schedule for this re-
15 opened week will be in accordance with our prior notice, basic-
16 ally two weeks, and then one week thereafter as follows.

17 Let's put a few extra days in -- actually, no extra
18 business days -- and key it from a Monday.

19 MR. ELLIS: Yes, sir, can I just have a moment? I
20 think we would like to discuss the schedule, if we may.

21 JUDGE BRENNER: With the other parties?

22 MR. ELLIS: We may have a suggestion for the Board.

23 JUDGE BRENNER: I will tell you what we were going
24 to propose, and we will give you a moment to tell us if that is
25 a bad idea. We were going to propose for April 25th for the

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1 receipt of Lilco's findings; May 2nd for the receipt of the
2 County's stand and any other intervenor that wants to file
3 in coordination along with the County; staff May 9th, and
4 Lilco's reply findings May 16th.

5 Again, when I say findings, that is shorthand as
6 opposed to opinions and proposed conclusions of law.

7 I also wanted to state on the record what was said
8 about the format in the conference call. This is a reopened
9 proceeding. We have a lot of findings on this contention.
10 The findings are to be in such a format that they can be
11 merged by us with the existing opinion and findings; that is,
12 add this to paragraph so and so of the opinion, or finding
13 number so and so, or add this as new findings or new paragraphs
14 at these various points in the opinion in the findings, or
15 delete a paragraph.

16 Now, if the changes are extensive from one paragraph
17 to a new one, just indicate you want to totally delete the
18 old one and substitute the new one rather than trying to parse
19 sentences, and I think that would be -- I know it would be
20 better for us. Hopefully it would be better for the parties,
21 also.

22 MR. ELLIS: May we just have a moment, Judge Brenner?

23 JUDGE BRENNER: All right, certainly.

24 Am I correct, there is no other business from the
25 parties here today? If there is no other business from the

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1 parties here today we have one or two minor things.

2 MR. REIS: The staff has none.

3 MS. LETSCHE: I am not aware of any.

4 JUDGE BRENNER: Let's come back at 3:15 based on that
5 clock.

6 (Recess taken at 2:55 p.m., to reconvene at 3:15 p.m.)

7 JUDGE BRENNER: Mr. Ellis?

8 MR. ELLIS: Judge Brenner, thank you for the opportunit-
9 ity. We were going to suggest the following. We did not seek,
10 of course, the reopening. We did not consider it was necessary.
11 We opposed the Board's reopening it. We objected to the
12 County's request. We heard a week's worth of testimony. As
13 a result, we thought that it would be not for Lilco to go first
14 but for the staff and the county to go first.

15 We discussed that with Ms. Letsche and Mr. Reis. They
16 don't want to go first. So we couldn't reach agreement on that.
17 We nevertheless think that is a good way to do it.

18 Secondly, if Lilco is to go first, we would request
19 that the Board give us seven days after April 25th. April
20 25th is a date on which our QA reply findings are due and the
21 same individuals who are involved in that effort as well will
22 be involved in this effort. So we ask it as a matter of
23 grace and mercy, that if we don't have others go first, that
24 if Lilco is to go first, that you set the first date for Lilco
25 on May 2nd, and to begin there.

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1 JUDGE BRENNER: Your last request is no problem if
2 we keep the order, no problem in the sense that we will grant
3 it. Who is to say how important a week is? It's a subject
4 that we are presently working on on findings as distinguished
5 from the large QA/QC area on which findings are in the second
6 phase.

7 That was the particular problem from all the workload
8 I couldn't burden the parties with, but we were anxious to
9 complete our work to the fullest extent practicable on the
10 first phase, and this reopening affected something that was
11 filed in the first phase, but I am sure we can find a lot to
12 keep us busy, as we have been able to do so far.

13 That's no problem. There is precedent for that, what
14 you are suggesting, Mr. Ellis. You probably didn't know it,
15 but in the Seabrook proceeding on the reopening on alternate
16 sites, the Appeal Board granted that very request on the part
17 of the Applicant there, with a motion that the ultimate site
18 reopening was based on the less than adequate in the staff
19 environmental statement, and rather than the utility's, and
20 giving the prior Appeal Board interpretations of what was
21 material, it was the staff's NEPA analysis that was material,
22 and the staff filed findings in that case with no protest, I
23 might say.

24 What about that, Mr. Reis, of the staff filing first
25 and then the County? And then Lilco and then the staff reply?

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1 There is only one possible flaw, the precedent I am
2 talking about involved two parties filing findings as it turned
3 out, although there was an opportunity for the intervenor to
4 file. Arguably, the County may disagree with Lilco more than
5 with the staff and, therefore, will not have been able to see
6 Lilco's findings before filing its last findings. And I don't
7 want two replies coming in.

8 Have you considered that, Mr. Ellis, in your sugges-
9 tion?

10 MR. ELLIS: No, Judge Brenner. I had not considered
11 that particular point.

12 MS. LETSCHE: I am afraid it does that. That's why
13 we had opposed Mr. Ellis' suggestion.

14 JUDGE BRENNER: Well, I anticipated you.

15 MR. REIS: I was going to say, I think the Seabrook
16 precedent --

17 JUDGE BRENNER: It's not binding precedent. All right,
18 you don't like the idea.

19 MR. REIS: I thought we had a perfectly good suggestion
20 from Mr. Ellis, but everybody sort of sat here and silently
21 agreed to moving everything back one week and just taking care
22 of it that way. I don't think we have to go further.

23 JUDGE BRENNER: Those suggestions are for two different
24 purposes. Either one would alleviate the particular date
25 filing that Lilco is worried about, understandably, given the

djk 1 other findings due.

2 All right, if we had more time, Mr. Ellis, maybe we
3 would explore it more. I am not saying your suggestion is
4 without merit, but let's take the easier way out for us, anyway,
5 as of this very moment, and keep the sequence the same but
6 change the dates as follows:

7 Tell me if I get it wrong. Lilco will file, so they
8 are received on May 2nd, and then the County would file on
9 May 9th. These are all received dates. The staff, May 16th,
10 and Lilco reply on May 23rd.

11 MS. LETSCHE: Judge Brenner, at the risk of further
12 confusing things, I have no particular objection to the schedule
13 you have set, but reflecting on your suggestion, which wasn't
14 Mr. Ellis', that the staff filing appropriately might have come
15 earlier, it might make sense to reverse the staff and Suffolk
16 County filings in this case.

17 The objection I had to Mr. Ellis' suggestion was that
18 one, you noted, which was the County having to file its position
19 before having received Lilco's. That wouldn't be a problem if
20 the staff had gone first before us, because Lilco would have
21 gone prior to the staff. I am just offering that as a suggestion
22 if the Board thought it would be beneficial to have the staff
23 filing earlier rather than later.

24 JUDGE BRENNER: I think it would have been more bene-
25 ficial as between the staff and Lilco rather than between the

1 staff and the County, given the focus of these last two days,
2 at least, that's what I had in mind. I think it would be
3 acceptable to leave the Order this way.

4 If there is something earth shaking that is a big
5 surprise in findings that are filed after your last filings,
6 you can make a particular request, but make the request well
7 grounded and directed and, if you are asking leave to do some-
8 thing, ask for the leave separate and in advance of actually
9 doing it. At least that is the normal procedure absent some
10 special circumstances.

11 Well, I don't know what page we are up to as of this
12 moment, but I know it is over 21,000. The record is closed on
13 all issues except the possibility of phase two emergency
14 planning issues that recognizes the fact that there are some
15 filings we are still contemplating. One in particular is the
16 supplemental agreement on contention 13a, Suffolk County
17 Contention 13a, which we discussed, but the evidenciary records
18 are closed as of this time.

19 It is possible that we may receive motions on two
20 subjects that have been discussed and, if and when we receive
21 them, we will look at them, but we are not automatically holding
22 the record open as we discussed previously.

23 Depending on our future rulings, we may not again
24 be on the record with the parties, so I want to take this
25 opportunity to thank the counsel for all parties and their

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1 other representatives for their true conscientiousness and
2 professionalism through this long and difficult proceeding.
3 It has been a challenge and, therefore, in that sense a
4 pleasure for us to deal with parties who are so well represented.
5 It makes it easier for us to demand, also, as I said, on one
6 or two occasions, we do that when we know that the parties
7 are so professionally represented. And it just makes it
8 easier for us.

9 There are times when we cut across more than one
10 issue, and I had taken a look out in the audience and seen
11 the number of attorneys out there and felt decidedly outnum-
12 bered, but we recognize why they were necessary, given the
13 complex and varied issues among all the parties.

14 I also want to particularly thank our court reporter,
15 Mr. Girard. Anybody who gets thrown into a proceeding like
16 this with these new terms that we are all familiar with and,
17 therefore, zip right by them, and comes out with the transcript
18 of the quality that he did, is greatly appreciated. And then
19 he reads the transcript as he did both on request to reread
20 the question and in the evening going over the things that he
21 and I looked at together for future guidance the next day,
22 was above and beyond the call of duty, and we appreciated it.
23 And added to all that were the acoustics in the room and the
24 dropping of my voice after 21,000 pages. So thanks, Carl,
25 very much.

1 We are adjourned or completed, depending on what
2 happens in the future.

3 Thank you.

4 (Record closed at 3:25 p.m.)
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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the
NRC COMMISSION

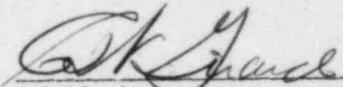
In the matter of:

Date of Proceeding:

Place of Proceeding:

were held as herein appears, and that this is the original
transcript for the file of the Commission.

Official Reporter - Typed



Official Reporter - Signature